United States Court of Appeals
for the Second Circuit

EXHIBITS

77-7043

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B

HECTOR CRUZ, MATTHEW GULLEY and
CARMINE PERELLI, individually and
on behalf of all other persons
similarly situated,

Plaintiffs-Appellees,

GEORGE DUNLEAVY, LOUIS POVEROMO,
NICHOLAS PECHAR and GEORGE MITCHELL,

Intervenors-Plaintiffs-Appellees,

-against-

BENJAMIN WARD, individually and in
his capacity as Commissioner of the
New York State Department of
Correctional Services, VITO M.
TERNULLO, individually and in his
capacity as Director of Matteawan
State Hospital, and LAWRENCE SWEENY,
individually and in his capacity as
Chief of Psychiatric Services at
Matteawan State Hospital,

Defendants-Appellants.

UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

EXHIBIT VOLUME

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Exhibit 77-7043

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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HECTOR CRUZ, MATTHEW GULLEY, CARMINE PERRELLI, individually and on behalf of all persons similarly situated,

Plaintiffs,

- against -

BENJAMIN WARD, individually and in his capacity as Commissioner of the New York State Department of Correctional services, VITO M. TERNULLO, individually and in his capacity as Director of Matteawan State Hospital, LAWRENCE SWEENEY, individually and in his capacity as Chief of Psychiatric Services at Matteawan State Hospital,

Defendants.

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Matteawan State Hospital
Fishkill, New York
December 30, 1975
10:30 a.m.

Before: GERARD L. GOETTEL, U. S. Magistrate

Appearances: JANE E. BLOOM, ESQSS.
Attorney for the Plaintiffs
Mid-Hudson Valley Legal Services Project
50 Market Street
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(cont'd)

Appearances (cont'd):

LOUIS J. LEFKOWITZ, ESQ.
Attorney for the Defendants
New York State Department of Law
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BY: ARLENE SILVERMAN, ESQSS.,
of Counsel

Also present:
Lawrence Sweeney

oOo

MR. GOETTEL: Do you wish to make any opening statements?

MS. BLOOM: No. I would just move to exclude any of the defendants' witnesses that might testify.

MS. SILVERMAN: I have Doctor Sweeney present. He, as you know, is a defendant, and he will be testifying, and I explained that to Miss Bloom that without Doctor Sweeney, I really can't conduct the case.

MR. GOETTEL: Is Doctor Sweeney going to be the subject of much testimony by the witnesses?

MS. BLOOM: He is directly involved

in most of the decisions that were made regarding what the plaintiffs are going to testify about.

MR. GOETTEL: Did the plaintiffs deal directly with him?

MS. BLOOM: Sometimes.

MR. GOETTEL: Will there be credibility questions as to what was said as between Doctor Sweeney and the witness?

MS. BLOOM: There might be.

MR. GOETTEL: Then what we will do is we will allow Doctor Sweeney to stay until such point as you reach questions of the witness concerning discussions with Doctor Sweeney.

At that point, we will have to excuse him just during that aspect of the testimony.

MS. SILVERMAN: I would object to that. He's a defendant. He's entitled to be present.

MR. GOETTEL: Is he a named defendant?

MS. SILVERMAN: Yes, he is. I just actually brought it up because Miss Bloom had said that to me previously. I indicated to her he was a named defendant.

MR. GOETTEL: I had not realized that he was a named defendant. In that case, I don't know of any case in excusing the party to the proceedings.

MS. BLOOM: One of our witnesses is present. If the defendants have any objection to his presence, he can be excluded.

MS. SILVERMAN: No, we have no objection.

MS. BLOOM: One other motion. The plaintiffs have expressed some concern to me regarding the presence of guards in the courtroom while they are testifying as some of the acts involve acts by the guards.

If they could sit either at the door or immediately outside the door --

MR. GOETTEL: Does that create any security problem?

DR. SWEENEY: It does.

MR. GOETTEL: Can we use guards other than those about whom they will be testifying?

DR. SWEENEY: I don't think any of these guards are involved.

MS. BLOOM: I don't know. Would there

be any problem to the guards sitting at the door or immediately outside the door?

DR. SWEENEY: They're supposed to be in it.

MS. SILVERMAN: I think it would be necessary and best if we had the guards. Why don't you check before we put them on the stand as they come in?

Ask them if there will be a particular problem. I think there should be the guards.

MR. GOETTEL: I don't think I can alter security prison regulations. I would ask them to not use guards about whom there is going to be testimony. If that should occur, perhaps we can switch around temporarily.

MS. BLOOM: Then I would ask that the guards that are present be instructed that the testimony that is taken here not be repeated to anyone outside this courtroom.

MR. GOETTEL: That is certainly understandable. Will you gentlemen make a point of not discussing any of the testimony which you hear in here today with any of the other guards or persons who are involved with these particular plaintiffs?

MS. SILVERMAN: I would indicate that this is a public record that is going to be made public and ultimately filed.

MR. GOETTEL: At that time, it can be seen, but to the extent that there may be questions of credibility, I don't think that one set of witnesses should get the advantage of knowing what the others have said.

MS. SILVERMAN: I would agree with that, Your Honor. I gathered Miss Bloom's request went beyond that.

MS. BLOOM: No, that was the only request.

MR. GOETTEL: Call your first witness.

MS. BLOOM: The first witness will be Matthew Gulley.

MATTHEW GULLEY, after having been duly sworn, assumed his seat as a witness, was examined and testified as follows:

MR. GOETTEL: State your name please.

THE WITNESS: Matthew Gulley Junior.

DIRECT EXAMINATION BY

MS. BLOOM:

Q What is your age?

A Thirty-two.

Q Where are you currently incarcerated?

A Fishkill Correctional Facility Transfer Unit.

Q In 1968, were you convicted of a crime?

A Yes, I was.

Q What was that crime?

A Robbery and burglary.

Q What sentence did you receive?

A I received zero to ten year sentence.

Q When and where were you originally incarcerated?

A In Attica Prison.

Q When were you incarcerated?

A 1968.

Q Would you describe for us a typical day that you spent at Attica Prison?

MS. SILVERMAN: Objection, Your Honor.

MR. GOETTEL: What grounds?

MS. SILVERMAN: I don't see the relevancy.

MS. BLOOM: The relevance is that one

of the issues in this case is the difference in conditions between prison and Matteawan, and I want to have this witness testify as to the conditions in prison.

MR. GOETTEL: Is it envisioned that if he is returned to prison, he will be returned to Attica?

MS. BLOOM: He would be returned to Attica or to a maximum security facility that would be substantially similar to Attica.

MR. GOETTEL: I will allow the testimony.

A Well, you get up in the morning and about quarter after six, you go to the mess hall. You eat breakfast, come back to your cell, locked back in and you be in about an hour and they let you out and if you are assigned to any job or work detail, you go and do your job.

When that's completed, you come and locked back in your cell. Then twelve o'clock, you go to the mess hall. Maybe about twelve-thirty, you come back from the mess hall, go back to your cell and you're in there for probably about an hour.

Then they let you out again for the afternoon cleanup or whatever detail you have. Once you complete this detail, come back to your cell until the three o'clock, three-thirty shift comes on.

Then you go to the yard for an hour or an hour and a half and it depends on whether they have the winter schedule or summer schedule.

You either go to mess hall from the yard or either come back to the block and go from the block to the mess hall and about five o'clock, you go to the mess hall and you're back about five-thirty. They lock you in for the night.

Q Did you begin to get sick at Attica in September of 1971?

A Yes.

MS. SILVERMAN: Objection, Your Honor.

MR. GOETTEL: Because it calls for a conclusion?

MS. SILVERMAN: Among other things.

MS. BLOOM: I can rephrase it.

MR. GOETTEL: Yes.

Q How did you feel in September of 1971?

MS. SILVERMAN: Objection.

MR. GOETTEL: I will allow that.

A Well, I felt sick. I became paranoid, I guess. I felt that people was trying to kill me. I was hearing voices and people screaming, and I was very nervous.

Q Did you try to ignore these feelings?

A Yes, I tried to fight it. I was trying to tell myself that my mind was just playing tricks on me, wasn't nothing really wrong with me, but it got to the point where I just couldn't cope with it.

I couldn't stop myself from hearing them.

Q In April of 1973, did you get into a fight with officers?

A Yes, I did.

Q Would you describe what happened?

MS. SILVERMAN: Objection.

MR. GOETTEL: Relevancy?

MS. SILVERMAN: Yes. I don't even know how we got to April of 1973.

MR. GOETTEL: What was the earlier date we were dealing with?

MS. BLOOM: September 1971.

MR. GOETTEL: Where is the witness in 1973?

MS. BLOOM: He is at Attica during this entire period of time.

MR. GOETTEL: You are bringing out these actions to show his mental state at the time?

MS. BLOOM: That's right.

MR. GOETTEL: I will allow it.

MS. SILVERMAN: Could we have the question re-read then?

Q In April of 1973, did you get into a fight with officers?

A Yes.

Q Would you describe what happened?

A I come in from the yard one day, and I come back to my cell, and I had been doing sculptures and the sculptures was -- I had them laid out in my cell to dry but they weren't completely dry.

So while I was out, they shook the cell down and the guards defaced the sculptures and took all my pictures of my wife and kids and threw them on the floor and stepped on the picture of my son.

So I went out to the hall captain, and I asked him why was this done. So he told me, he says he didn't owe --

MS. SILVERMAN: Objection.

MR. GOETTE: Sustained.

Q Describe what you said or what you saw, and not what someone said to you.

A After I saw the condition of my cell and the pictures in there, I went to the hall captain and I asked him why was this done.

He told me that he didn't owe me an explanation.

MR. SILVERMAN: Objection. That's not responsive.

MR. GOETTEL: You are not allowed to tell us what somebody else said to you. Only what you said and what you saw and what you did.

MS. BLOOM: I would think that it would be appropriate for him to testify what someone told him if we take this not for the truth of the matter, but for the effect on his mind.

MR. GOETTEL: Within that limited exception, under the new federal rules of evidence to show his state of mind, I will allow it not for the truth of what is being said, but to indicate the reaction it had upon the witness.

You may tell us what he said to you.

A He told me that he didn't have to answer any -- he wasn't answerable to me. He told me to go back to my cell. I told him I wanted to see the lieutenant.

He still insisted for me and told me -- he said, "Go back to your cell," and I refused to go back to the cell until I saw the lieutenant.

So some other officers come. One grabbed me. So we went to fighting. I ran back to my cell, and I don't know -- I don't remember too much then, but I know they said I broke my cell up and was fighting with the officers.

Q Where were you placed after this fight?

A In the box.

Q Would you describe how many hours you were locked in the box?

A Well, I was locked in the box for twenty-four hours a day because once I got there, they told me to shave and I didn't shave.

So they took my visiting privileges and my yard privileges. So I was confined to the cell all day.

Q What was in your cell?

MS. SILVERMAN: Objection.

MR. GOETTEL: Why are you going into this? There is no present indication that he will be transferred to anything comparable if he is transferred.

MS. BLOOM: There is indication that on previous occasions when individuals have been transferred from Matteawan back to prison that they are placed in the box.

MR. GOETTEL: I understand that, but that's a separate issue. That has to do with conditions existing in maximum security prisons per se.

I don't think it's the purpose of this litigation where you are dealing with persons who haven't been transferred to those facilities to go into the constitutionality of using such types of treatment.

MS. BLOOM: I understand what you are saying. The only purpose of this testimony is to indicate the conditions that he might be placed in if he was returned to prison.

MR. GOETTEL: I will take it as a matter of judicial notice just in a number of the cases that for disciplinary infractions at a maximum security institution, one can be placed in solitary confinement and similar other kinds of --

MS. BLOOM: My point is that on one

occasion, he was transferred from Matteawan or D & E back to the box at Attica and the punishment --

MR. GOETTEL: You mean he went directly from here to solitary type of confinement at Attica?

MS. BLOOM: That's correct. Attica or similar institutions. We can reserve this for --

MR. GOETTEL: I would assume that he was placed in this type of prison punishment not for events that occurred upon his immediate arrival at the maximum security institution, but for events that occurred before he left Matteawan?

MS. BLOOM: That's correct.

MR. GOETTEL: By leaving Matteawan, you are referring to the hospital portion of Matteawan?

MS. BLOOM: That's correct. We can reserve this kind of questioning until we reach that point if you prefer.

MS. SILVERMAN: I think that would be more appropriate assuming that at that time it's even admissible. At this point, she hasn't at all linked it up with what she's suggested to you.

MR. GOETTEL: Of course, both of you are starting on the assumption that from the record it's clear that Matteawan is a hospital and what the conditions of confinement here are.

I assume that this will come out in bits and pieces during the course of the testimony and from this, the plaintiffs are arguing that conditions, if transferred out of the hospital and back to a prison, are dramatically different; from which they argue that there must be a due process right to some type of hearing and determination before such a change is made since the effect of the change could be detrimental to the health and life of the prisoner.

Do I correctly state your position?

MS. BLOOM: That's correct.

MR. GOETTEL: I do believe, however, we are starting at the wrong end of the argument. Maybe you better reserve it.

DR. SWEENEY: For the record, can we get it straight that Matteawan is the hospital? The remainder of the place is the Fishkill Facility.

MR. GOETTEL: I think that would have been worth noting at the very beginning. You are assuming a greater knowledge of this facility on my part than I necessarily have.

MS. BLOOM: That is part of my purpose in going through some of the details in describing the other institutions, to lay a foundation.

We will get to a description of Matteawan and the other aspects of this facility as people testify.

MR. GOETTEL: Can we stipulate for the record so that we will at least have this basis; that this overall institution is known as Fishkill and that it includes -- I assume it's not a non-maximum security prison facility?

MS. SILVERMAN: It's a medium security.

MR. GOETTEL: Medium security facility and a prison hospital in which this patient was confined prior to his transfer to the Transfer Unit?

What else does this particular facility embrace, if anything?

DR. SWEENEY: Elderly and handicapped unit. Also two Actec programs.

MR. GOETTEL: What is that?

DR. SWEENEY: Those were special programs, sir, stress assessment and special training program, an intermediate stage between prison and the outside.

Also work release. We also have female psychotics here in a small number, also in Matteawan.

MR. GOETTEL: You mentioned before you got to the release type programs aged persons. I would assume that there is no criminal aspect to their being here?

DR. SWEENEY: They are elderly and handicapped prisoners serving time who cannot endure in the average facility.

MR. GOETTEL: Everything connected with it is of a penal nature but of different degrees and types of penal nature?

DR. SWEENEY: Yes.

MR. GOETTEL: There is no state mental facility here other than those for prisoners?

DR. SWEENEY: That's correct.

MR. GOETTEL: Can we stipulate that this is so before we go any further?

MS. SILVERMAN: Fine.

MS. BLOOM: Yes.

MR. GOETTEL: I now understand, and I must acknowledge I did not previously understand the composition of it.

The official name is Fishkill Correctional Facility?

MS. SILVERMAN: Yes.

MR. GOETTEL: Of which the Matteawan State Hospital is a sub-unit?

DR. SWEENEY: Correct.

MR. GOETTEL: And the Fishkill -- what is the remainder of it that the prisoner is presently in?

MS. BLOOM: General confinement at Fishkill Correctional Facility.

MR. GOETTEL: Proceed.

Q How did you feel while you were in segregation?

MS. SILVERMAN: Objection.

MS. BLOOM: His feelings while placed in a twenty-four-hour lockup are directly relevant to this case.

MR. GOETTEL: I understand your argument. I will allow it.

Q How did you feel in segregation?

A I felt very depressed, nervous. I was hearing voices, and I was under the assumption or I believed that they had a record player locked in the back of the cells and they was playing the record, and I was hearing the voices screaming.

I asked the officers would he turn the record player off, but he said there was no record player.

Q Did you at any time feel like hurting yourself?

A Yes, I tried to burn myself up twice, and I tried to cut myself to kill myself once.

Q Did you receive any medication while you were in segregation?

A No, I didn't.

Q Did you see a medical doctor at any time?

A Well, one would come by, but he would ignore you because I told him that I felt I saw warts growing out of my body all over me and he just waved, you know, that he's ignoring you and walked back.

Q Did you see a psychiatrist at any time?

A I saw a psychiatrist once. Once he come up. The day he come up he asked me how I felt. So I was explaining to him that I was hearing the voices and that I see these warts growing all over me.

So he just said all right. Then he left. The next day or two days afterwards, they transferred me to D & E.

MR. GOETTEL: Tell me what D & E stands for.

MS. BLOOM: Diagnostic and evaluation unit.

MR. SILVERMAN: Could we place that as to time?

Q When did you leave Attica?

A In '73, July '73.

Q Would you describe what D & E is?

MS. SILVERMAN: I'm going to object to that question.

MR. GOETTEL: Yes, I will sustain that, but I will allow you to ask him what occurred to him while he was in D & E and what he saw.

Q Would you describe a typical day at D & E?

A You get up in the morning. You shower or wash up. You have breakfast. Then you could take part in O.T. program there or go to --

Q What is O.T.?

A That's where you go and make different things in arts and crafts.

MR. GOETTEL: I assume it stands for occupational therapy?

A Or you could stay on the unit and either participate in going to play ping-pong, watch T.V. or just going to the one room they have group therapy program with the doctors and psychologists there trying to find out what your problem is, what you can do to help yourself.

Q Would you describe what the physical layout is of D & E? Are you in a locked cell?

A No, you're not in a locked cell. They have maybe fifteen rooms on each side of the hall. It's made like a hall.

At one end, they have a facility side where you could have recreation such as ping-pong or listen to the radio or record player and at the front end, they have a facility where they have the television with different arrangements for chairs and couches and tables and you go in there and most times when you go in there, there either would be a doctor, maybe a couple psychologists in there and you sit down and you have what they call a group therapy session and you discuss the different things that you feel that can help you.

Q How often did you see a psychiatrist while you were at D & E?

A Every day one would be there.

MR. GOETTEL: You haven't made it clear where the D & E is located.

Q Where is D & E located?

A In Fishkill part of Fishkill Correctional Facility.

Q Where is D & E located in relationship to Matteawan? Is it in the same building?

A Now it is, but at that time, it wasn't. At that time, it was in Building 21.

Q How often did you see a psychologist?

A Every day.

Q How were you feeling at this time?

A Well, I was feeling depressed, and I was distrustful, and I was fearful that different officers were going to take my life.

Q Were you involved in any fights at D & E in July of 1973?

A No, not in July.

Q In August of 1973, were you involved in any fights at D & E?

A Yes, I was. In August, I was.

Q What happened to you in August?

A Well, I had a misunderstanding with four or five different guys and they jumped on me. They ganged up on me and after the fight, I was taken over to the same ward, P Ward which was --

MS. SILVERMAN: Which ward?

A P Ward, and it was for disciplinary action or whenever you have an infraction. They take you over there.

So I was put over there and locked up over there for disciplinary action.

Q Did you see a doctor before you were transferred over there?

A No, I didn't.

Q Did you have any kind of hearing?

A No, I didn't.

Q What were the conditions at the transfer unit?

A Well, you just stay locked in the cell all day. You get half an hour of recreation and you come back in and you're in the cell all day.

Q How long did you stay there?

A Seven days.

Q Did you receive medication?

A No, I didn't.

Q Did you see a doctor?

A No, I didn't.

Q How did you feel?

A I felt depressed, nervous. I was still hearing voices.

Q What happened to you after you stayed there for one week? Where did you go?

A Well, they brought me back to D & E.

Q Did you get involved in another fight in D & E in September of 19 --

MS. SILVERMAN: I'm going to object to that. I mean, we have gone on with this, but I don't understand what the fight in D & E has to do with this lawsuit.

MR. GOETTEL: I think it has to do with the contention that the movement of the patient has been dictated by behavior rather than by medical condition.

By behavior, I mean disciplinary behavior.

MS. SILVERMAN: I believe it's outside

the scope of the Complaint. This is the first time I hear of anything about being --

MS. BLOOM: It's specifically in the Complaint.

MR. GOETTEL: I thought it was. However, the distinction between D & E and Matteawan is not entirely clear to me and the extent to which this may concern a facility other than the hospital could be a valid objection.

MS. BLOOM: It's my understanding that patients are placed in D & E for diagnostic and evaluation work and if it's determined that they are in need of further treatment, they are then placed in Matteawan.

People can be sent directly from prison to D & E without seeing outside psychiatrists or a court.

MR. GOETTEL: I think one objection that Miss Silverman is raising is that your case doesn't concern movements in and out of D & E, but rather movements in and out of the hospital, and I think she's distinguishing the two.

MS. BLOOM: My understanding is that D & E is part of the hospital or closely annexed. The same psychiatrists that work in D & E might work in the hospital. Medication is given out in a similar manner.

MR. GOETTEL: The witness testified, I believe, that the D & E facility used to be a separate building, but now it's part of the hospital building.

Whether he's right or wrong about that, I have no way of knowing. This may be a bit peripheral. I think in time, I will be able to sort out what is and what isn't.

Q Did you get involved in another fight in D & E in September of 1973?

A Yes, I did.

Q Would you describe what happened?

A One of the individuals that slept in the same room that I -- rooming in the same room that I had, he was involved with a fight with another guy or the guy said he had a fight with him and then he told the officers.

The officers come, drag him out to take him and lock him up and one officer grabbed him around the neck and was choking him and two other officers, one had each of his hands and one officer grabbed his hair and was pulling his head back.

So me and another guy that slept in the same room grabbed one of the officers and pulled him off the guy and the officer stepped back and then he come in, charged me.

So I pushed him back and he come in at me again, and I hit him and his false teeth come out and broke. I was locked up again. I was sent over to the jail ward again to the lockup again.

Q Were you sent to the Transfer Unit at Fishkill?

A Yes, I was.

Q How many hours were you locked in a cell?

A Twenty-three and a half hours.

Q Did you receive any medication?

A No, I didn't.

Q Did you see a doctor before you were transferred?

A No, I didn't.

Q How long did you stay in the Transfer Unit?

A I stayed over there seven days, and I went before an adjustment committee and they read off to me the complaints of the officers and told me that I would be locked up until they transferred me back to Attica because of the fight with the officers I had had.

Q Did you receive written or oral notice of these charges before you walked into the room?

A No, I didn't.

Q Did you receive any notice of the decision?

A After I got to Attica, I received a paper that said that I had been before the adjustment committee and that they had found me guilty and if I disapproved of their decision, I could appeal to the commissioner.

Q Did you see a psychiatrist before you were transferred from D & E to Attica?

A No, I didn't.

Q Did you feel that you had recovered from your mental illness?

A No, I didn't.

Q Where were you sent from D & E?

A I was sent back to Attica.

Q Where were you placed when you arrived at Attica?

A They put me right in the box.

Q How many hours were you locked in?

A Twenty-four hours a day.

Q Were you given medication?

A No, I wasn't.

Q Did you see a doctor?

A He would come -- the medical doctor would come by, but he would always ignore you when you were trying to explain to him that different things was wrong with you.

Q Did you see a psychiatrist?

A I saw a psychiatrist after I was there for about twenty-eight days.

Q What did you discuss with the psychiatrist?

A I told him that I was hearing voices and that things was growing off of my body, and I heard people screaming and yelling and that I felt like hurting myself.

Q What happened after you saw the psychiatrist?

A Well, two days later, they transferred me back to D & E in Fishkill.

Q How did you feel when you returned to D & E in November of 1973 as compared with how you felt when you left D & E in October?

A I felt worse because the way my condition had got, I didn't even feel like I was living inside my own body.

Q Were the conditions at D & E when you returned similar to those conditions in D & E when you had left?

A Yes, they were.

Q Was your program basically the same?

A Yes, they were.

Q Did you receive medication?

A Yes, I received medication.

Q How often did you see a psychiatrist?

A Every day.

Q How often did you see a psychologist?

A Every day.

Q How long did you stay at D & E?

A About sixty days.

Q Did you see any psychiatrists before you left D & E?

A Yes, I saw three or four doctors and they explained to me that if I needed further treatment or felt I needed further treatment, then I would be sent to Matteawan where I could receive medical treatment and they explained to me what type of medical treatment would I be able to receive over there.

Q Did you see a lawyer before you left D & E?

A Yes, a lawyer was assigned to me and he explained to me that if I felt that I needed help that I could go to Matteawan and receive this help. But if I felt that I didn't want to go to Matteawan that I was well enough that I shouldn't be placed in Matteawan, then he would prepare whatever papers that was necessary in order to send me to Matteawan.

Q Did you go to court?

MS. SILVERMAN: Objection to that as unresponsive.

MS. BLOOM: He was describing his conversation with the attorney and I had asked him if he had seen an attorney. I think it is responsive.

MS. SILVERMAN: I think the answer to that is yes or no.

MR. GOETTEL: You waited a bit long for the fact that he was going on beyond the question. He's got it in the record. I don't know if it's of any tremendous consequence.

You are not contesting the fact that the witness was put in Matteawan with proper due process?

MS. BLOOM: No, we just want to establish that fact.

MR. GOETTEL: I take it from your motion papers that it's an implicit argument that since there is so much due process involved before a patient can be admitted to Matteawan that there must be some process involved in removing him?

MS. BLOOM: That's correct.

MR. GOETTEL: Proceed.

Q Where did you go when you left D & E?

A I went to Matteawan.

Q Will you describe the physical layout of Matteawan?

MS. SILVERMAN: Could we again place this as to time?

Q When did you leave D & E?

A I left D & E in, I believe it was January of '73 -- '73 or '74. The beginning of '74, I think it was.

Q Would you describe the physical layout of Matteawan? Where did you live?

A I lived on Ward 11 when I first got there. The layout of the wards is they have dormitories. Downstairs they have like a day room which consists of the T.V., ping-pong tables, different bags, different things you can -- recreation equipment, and I got involved into different programs there.

I had a job. I was floorman for upstairs and downstairs cleaning. I went to occupational therapy.

I was participating in the music. I was in the band. I went to school for a little while. I went to auto mechanics. I completed the auto mechanics course there.

Q Did you live in a locked room?

A No, I didn't.

Q Would you describe the room that you lived in?

A Well, it was a dormitory setup. They might have anywhere from forty to fifty beds and it was an open ward.

Q Did you receive medication?

A Yes, I received medication.

Q How many times a day did you receive medication?

A Four times a day.

Q Did you see psychiatrists?

A Yes, you saw a psychiatrist.

Q How often would you see a psychiatrist?

A You would see him sometimes maybe twice a week, but if you chose to see him, you could have him call and they would come down and you could see them.

Q How often would you see a psychologist?

A I would see -- I had therapy groups every two weeks -- I mean twice a week, I would see a psychologist.

Q In January of 1975, were you involved in a fight?

A Yes, I was.

Q Would you describe what happened in that fight?

A Well, one day I was sick. I was bleeding from my rectum whenever I go to the bathroom. I was bleeding, so I called the nurse. I asked the officer to call the nurse or to call the doctor and tell him I would like to see him, that I had a personal problem I would like to discuss with him.

So he told me he couldn't -- the officer said he couldn't call the doctor but he could have the nurse do it and it was on a Saturday.

So when she come in, the nurse told me, she said, "Well, there is no doctor on duty now." So I told her, I said, "There is a doctor on duty," because every day up on the hospital ward up there, there is a doctor on.

So she told me -- well, she still said, "I still say there is no doctor on." So I told her, I said, "I need a doctor. I need to see a doctor. I'm sick."

I told her I don't usually come and bug anybody about any medication or anything, but I'm sick. So she asked me what was the matter. So I told her that I think I could explain to the doctor better what was wrong with me.

So she said -- well, she still said that there is no doctor upstairs. So I told her, I said, "Well, you know, when I came back from chow," I said, "You had a paper over the window," I said, "And nobody could tell whether you was in or not. The nurse before you don't put -- didn't have no paper over the door, so if a man is going by and he gets sick, he could go there and ask for medication."

I asked her would she take the paper off the door so that when we come from chow or go to chow, we'd be able to see if she's in so if we need something, we can ask her.

She told me that I don't tell her how to do her job. I guess I got nervous. I went and got a mop ringer and I broke the window out of the door.

Q Where were you placed after this occurred?

A I was placed on the jail ward.

Q How long were you placed in the jail ward?

A Well, they must have checked the records or saw that I can't take being locked up in a cell, so they took and put me upstairs in the restraining sheet.

The restraining sheet, it's like a sheet, but it's like a cutout for your head to come through and you lay on your back and they got buckles on it.

They tie you down on that. They lock you down in there.

Q How long did you stay in the restraining sheet?

A I stayed in the restraining sheet about five or six days.

Q Where were you placed after that?

A They let me out of the restraining sheet with the stipulation that if I go back to the jail ward and stay over there with the door open that they would let me out of the restraining sheet.

So I went back to the jail ward.

MS. BLOOM: The next aspect of this testimony will involve conversations with Doctor Sweeney.

MR. GOETTEL: Well, since he is a party, I don't see how we can exclude him. If he were just a witness even though he is necessary for the defense's consultation, I would exclude him at this point.

I don't know any authority for excluding a named defendant. I think the defendant has a constitutional right to be present. If you know of anything to the contrary, enlighten me on it.

Q During this two-week period of time, had you seen a psychiatrist?

A Well, the first week that I was in the sheet, a psychiatrist would come by every day, but he wouldn't say nothing to me.

Q What happened after you spent a week in the jail ward?

A Well, the first day I got back --

Q You got back from where?

A I got back from the hospital out of the sheet, the officer told me that I was going to go back to my regular ward. So I said -- I asked him was there any chance that they would let me go back to my ward.

So Doctor Sweeney had come over. So he told me that I would be going back to my ward the next day, that there was no possible way that he could get me back on my ward that day.

So when the next day came, they called me for evaluation which I saw Doctor Sweeney at evaluation.

Q What did you discuss with Doctor Sweeney at this evaluation?

A I explained to him that I had been bleeding from my rectum and that I was sick, and I asked him to increase my medication because I couldn't sleep, that I was still hearing things.

So he told me, he said, "Well, we're going to try to clear that up about your bleeding, you know, your physical problem that you have" as far as me bleeding when I used the stool and he told me that I would be placed on the ward but it wouldn't be back on the same ward that I was on.

He said it's just a matter of him finding out which ward, deciding which ward they're going to send me to.

Q What happened then?

A I went back to the jail ward.

MR. GOETTAL: Is the jail ward located in Matteawan?

THE WITNESS: Yes, it is. It's part of the complex of Matteawan.

A I went back to the jail ward and the next day, they told me to get my stuff together, that I was being transferred out.

Q Who told you this?

A The officers. They had about four or five officers that came and made me get my stuff together, my property together.

Q Where were you transferred to?

A I was transferred to the Transfer Unit.

Q Where is the Transfer Unit located?

A It's in Fishkill part of the complex of Fishkill Correctional Facility.

MR. GOETTAL: At this point, I think perhaps to clarify the record, can we agree that the Transfer Unit is a temporary place of incarceration for patients who are about to be moved to other places of detention in the prison system?

MS. BLOOM: Yes.

MS. SILVERMAN: I think we can so stipulate.

Q Would you describe what the conditions were at the Transfer Unit?

A Well, coming from Matteawan to the -- you get to the Transfer Unit. As soon as you get there, they make you take off all your clothes. They look in your mouth, look between your legs and make you bend over and look up your rectum.

Then you are given a room and you stay on.

You could just sit out, watch T.V. all day. You get an hour's -- you go to the yard for an hour and then you just stay on the unit all day until ten o'clock, until it's time to lock you in.

MR. GOETTEL: Let me stop you at this point, Miss Bloom, and inquire whether the conditions at the Transfer Unit are basically part of this case or not. I didn't previously understand.

MS. BLOOM: They are. I just felt that for consistency sake, it would be helpful to describe what the conditions were there.

In some respect they are. At times, people are taken off medication completely and they are locked in rooms for longer periods of time than they would be at Matteawan.

MR. GOETTEL: Is not the Transfer Unit a temporary place of incarceration for persons in transit?

MS. BLOOM: That's correct.

MR. GOETTEL: I think from what I gather from the papers on the motion, your argument concerns the great difference between the hospital facility and a maximum security prison facility?

MS. BLOOM: That's correct.

MR. GOETTEL: Even for that matter, maybe a medium security and whether you classify the Transfer Unit as maximum, medium or what have-you, it's just a temporary aspect of this and which I don't think has any tremendous bearing on the case.

I don't understand it to have a tremendous bearing on the case.

MS. BLOOM: We can proceed.

Q How many days did you stay at the Transfer Unit?

A I stayed in the Transfer Unit a week.

Q Where were you sent then?

A I was sent to Clinton Correctional Facility.

MR. GOETTEL: When was that?

THE WITNESS: That was in January of 1975.

Q Was this the end of January?

A Yes.

Q Where were you placed in Clinton?

A I was placed in a box or in a room with no toilet, no sink. Just a mattress and just in my underwear.

Q How many hours were you locked in the cell?

A Twenty-four hours a day.

Q Did you receive medication?

A They gave me some medication, but not the type that I was receiving at the hospital.

Q Did you see a psychiatrist?

A Well, I saw -- afterwards, I saw a psychiatrist. After I was there just about two weeks, I saw a psychiatrist.

Q When you first got there for the first two weeks, did you see a psychiatrist?

A No, I didn't.

Q Did you see any psychologists?

A No, I didn't.

Q How long did you stay in this cell, how many weeks?

A I stayed in that cell two weeks.

Q What happened then? Did you see a doctor, a psychiatrist at the end of two weeks?

A Yes, I did.

Q How long did you speak to the psychiatrist?

A Maybe a half an hour.

Q What did you talk to the psychiatrist about?

A He asked me what was the problem, and I explained to him that when I felt from that Transfer Unit, that they told me that the officers who took me told me that I was going to a funeral and he asked me whose funeral.

So I told him that the officers had said that my mother and my two sisters had died and I couldn't go to the funeral from Matteawan.

So I had to go up there and come to Clinton in order to go to the funeral. So I had got a letter from my sisters and he told me, he said, "Well, they said you have received mail from your family and nobody is dead."

So I just said, "Well, that's what the officers told me," you know, and I explained to him that I felt sick and I was hearing voices.

So he told me, he said -- and I felt like hurting myself. He told me, he said that they would arrange for me to go to an outside court in front of the judge to try to seek help, see if they can get me some help.

Q Did you see a judge?

A Yes, I was assigned a lawyer and I went before a judge in Plattsburg and he asked me if I felt that I needed psychiatric treatment or help. So I told him yes, I did. So he signed the papers and I was sent back to Matteawan.

Q About when were you sent back to Matteawan?

A After I had been there for about two weeks. It was in the middle of February, I think it was. I was sent back to Matteawan.

Q Of 1975?

A '75, yes.

Q How did you feel when you returned to Matteawan in February of 1975 as compared with when you left in January?

A Well, I felt worse, worse than I did because I just didn't know how to deal with what was happening with me. I didn't know how -- what was happening to me.

Q How did you feel physically?

A I had lost weight. I couldn't eat nothing, and I was overly nervous, more nervous than I was before.

Q When you returned to Matteawan, did you receive medication?

A Yes, I received medication.

Q How often?

A Four times a day.

Q Did you see a psychiatrist?

A Yes, I saw a psychiatrist.

Q How often?

A Well, one would come every day, but normally I wouldn't actually have anything to say or see him or say anything to him unless I needed to have different medication or I had a problem that I wanted to discuss with him or something.

Q Did you see a psychologist?

A Yes, I did.

Q How often?

A I saw a psychologist once a week in the therapy program I had.

Q How often would you be evaluated by a psychiatrist at Matteawan?

A Well, every month. Sometimes once every month. Sometimes twice every month.

Q Would you describe what an evaluation was?

MS. SILVERMAN: Objection.

MR. GOETTEL: I sustain the objection but he can tell us what occurred to him during the evaluation.

Q What was the nature of the conversation that you had with the psychiatrist during the evaluation?

A Well, there's different doctors. Sometimes when I go there, some doctors I wouldn't talk to because, you know, they wasn't my ward doctor, so I didn't feel that they would really understand my problem because I had discussed with Doctor Shaeffer and he was my ward doctor, different things that was a problem that was troubling me and asked me how could I deal with it, you know, why was this happening to me.

Q Is it true that you were not evaluated by the same doctor each time that you went for an evaluation?

A Yes.

Q How long would a typical evaluation last?

MS. SILVERMAN: Objection.

MS. BLOOM: I'm asking how long in time.

MR. GOETTEL: Tell us the longest and the shortest periods that they ever lasted.

A The shortest would be about five minutes. The longest would be a half an hour.

Q Were you evaluated by a doctor the first week of October, 1975?

A Yes, I was.

Q Do you remember who did that evaluation?

A I think it was Doctor Factora.

Q Would you describe the nature of your conversation with Doctor Factora in that evaluation?

A I came up and he asked me how I was doing. I told him that I was still nervous and, you know, I was still fearful that I would be killed.

So he asked me why did I think this. I explained to him that different officers in Attica had said that they would kill me and everything. So he told me he didn't believe that --

MS. SILVERMAN: Objection.

MR. GOETTEL: Sustained.

Q Did you discuss anything else with Doctor Factora?

MS. SILVERMAN: I'm going to object to the question.

Q Did you discuss anything else relating to your mental condition?

MS. SILVERMAN: Objection.

MR. GOETTEL: On what grounds?

MS. SILVERMAN: I think what he told Doctor Factora -- I think she should be asking him that.

MR. GOETTEL: She is not asking for Doctor Factora's responses at this point.

MS. SILVERMAN: I think it might be misleading the witness.

MR. GOETTEL: Tell us anything else that you said to Doctor Factora at that time.

A I told Doctor Factora that I wanted to know exactly what was wrong with me, why was I still hearing voices. He told me that --

MS. SILVERMAN: Objection.

MS. BLOOM: Again this would be within the same kind of hearsay objection exception.

MR. GOETTEL: I don't see why his state of mind while he is in Matteawan is germane. Can you explain that to me? It almost is counterproductive to your case.

MS. BLOOM: Well, it seems to me his state of mind on October 9th when he was evaluated is extremely important, how he felt is important.

MR. GOETTEL: Why?

MS. BLOOM: Well, his feeling regarding his mental condition. His mental condition is the issue. It would be the normal subject of discussion.

MR. GOETTEL: I'm not sure it's relevant, but I will let it run a while, Miss Silverman, to see where it's going.

At this point, it's got me a bit puzzled. Tell us what Doctor Factora said to you about what was wrong with you and what you told him.

A He told me that everything took time to get to the bottom of, he said, but he don't believe that officers, anybody like that would threaten to kill me.

Q Did you discuss with Doctor Factora your medication?

A Yes, I explained to him that at nights, I was still having bad dreams, and I couldn't sleep, and I would like my night medication increased. So he said he would increase it.

Q About a week later, were you involved in a fight at Matteawan?

A Yes, I was.

Q Would you describe what happened?

A Well, one of the patients on my ward had come back from school and somewhere or another he had heard that he had been evaluated to go back to prison and he went on a rampage.

He was tearing the T.V. off the wall and throwing chairs. So some of us tried to stop him, you know, tried to calm him down because he was an associate of ours and the officers was then to run up and grab him.

We told the officers, "Don't grab him because he might swing on you. Just call the doctor."

So he said okay. He went to get the doctor, but there was a seargent standing at the door. He opened the door and ran in. He picked up a chair and come toward the patient with it.

So the patient picked up the mop ringer that he had and the seargent threw the chair and the patient threw the mop ringer and they hit each other, so nobody didn't get hit with it.

We grabbed hold of the patient and we were trying to calm him down. So he started getting calmed down. So the seargent come up and told us, he said, "Let him go." He said, "I can handle him."

We told him, "He's just going to get wild if you try to grab him, so call the doctor." So he told us that we don't tell him how to do his job and we didn't have no business interfering with that.

We still held on to the patient and he was trying to grab the patient and different guys would shield the patient so that he couldn't grab him.

Then four or five officers come. I don't don't if they thought that the guys who had a hold of the patient was trying to fight the officer or what.

Anyway, they come in and they started grabbing everybody who was in the area. They was grabbing them around the neck, you know, and some of the guys went to swinging back and a whole fight jumped off there.

Q Where were you placed after this fight?

A I was placed in the jail ward.

Q How long did you stay in the jail ward?

A Well, I only stayed for maybe twenty minutes because they took me from there and put me up in the restraining sheet in the hospital.

Q How long did you stay in the hospital in the restraining sheet?

A I stayed in the hospital about four or five days.

Q Did there come a time when you were seen by doctors for an evaluation?

A Yes, I was seen by four or five doctors while I was still in the restraining sheet and they asked me did I know -- they said, "Do you know what this is?"

So I told them no, I didn't understand what they meant what was it. So they told me it was a --

MS. SILVERMAN: Objection.

MR. GOETTEL: Again, why are you bringing in this hearsay?

MS. BLOOM: Again, this goes to his state of mind and his reaction to what was going on in his evaluation.

MR. GOETTEL: I don't see how his reaction at this point is germane.

Q Testify to what you said to them.

A I asked them could I come out of the restraining sheet. At that point, they told me that I was --

MS. SILVERMAN: Objection.

Q What else did you say to them?

A Well, I said it was 1974 and one of the doctors said, "It's what?" I had made a mistake --

MS. SILVERMAN: Objection to what the doctor said.

MS. BLOOM: The problem here is that he can give answers to questions that were asked of him and it's totally incoherent.

MR. GOETTEL: I think it's fair to ask him after he said it was 1974 whether anyone corrected him or that. That's not exactly hearsay.

Were you corrected about what year it was?

THE WITNESS: Yes, I was.

Q Were you told by anyone that you were being evaluated because you were going to be sent back to prison?

MS. SILVERMAN: Objection.

MR. GOETTEL: I will allow that because that's a verbal act and it also goes to the heart of this case.

MS. SILVERMAN: I think then there has to be proof by whoever said it. I don't see why hearsay would prove it.

MR. GOETTEL: The one way to prove it is by an admission of a state official that this was the purpose. I think that would constitute, at least from the focus of the plaintiffs' case, something of an admission here. I will allow this.

MS. SILVERMAN: It would seem to me, just for the record, that to be an admission, it would have to be an admission of the defendant and I don't think that Miss Bloom has not established that any defendant was present.

MR. GOETTEL: I think a doctor authorized to act on behalf of the Matteawan staff is a person in a sufficient control group that his statements could be admissible against the institutional defendants.

MS. SILVERMAN: I will just renew my objection then.

MR. GOETTEL: You may answer the question as to whether you were told that you were being evaluated for purposes of a return to prison.

I think the answer to this may turn out to be negative, Miss Silverman, in which case, there would be no hearsay involved.

In any event, what were you told about the purposes of your evaluation?

A That it was for -- the purpose of me going back to prison because of the fight that I had been involved in with the officers. The pressure was put on them, on the doctors, from the officers unit.

So they had to get me out of there.

MR. GOETTEL: This is a rather

important part of the case, and I think it's essential that you identify who said this to you.

Can you tell me which doctor said that pressure had been put upon them by the officers unit to have you return to prison?

THE WITNESS: Doctor Sherman -- Doctor Sirman told me this.

Q How long did this evaluation last in minutes?

A Approximately about three minutes.

Q You were in a restraining sheet while you were being interviewed by the doctors?

A Yes, I was.

Q Did you usually have five doctors evaluate you at once?

A No, I hadn't.

Q During that interview, did you feel that you had recovered from your mental illness?

MS. SILVERMAN: Objection.

MR. GOETTEL: Sustained.

Q How did you feel during the interview?

A I felt that I was still -- I felt nervous. I was still hearing voices.

Q When did you leave the hospital ward at

Matteawan?

A The next day, I was taken from the hospital ward back to the transfer unit to Fishkill.

Q Did you have any other kind of a hearing before you were transferred to the transfer unit?

A No, I didn't.

Q Do you currently receive medication on the transfer unit?

A Yes, but not the amount that I was receiving at Matteawan.

Q Do you see a psychologist?

A No, I don't.

Q Do you see a psychiatrist?

A No, I don't.

MR. GOETTEL: I don't think it's necessary to go deeply into the conditions of the transfer unit. That's acknowledged to be a transitory condition.

Q Did you get involved in an incident in the middle of December?

A Yes, I did.

Q Would you describe what happened?

MS. SILVERMAN: Objection.

MS. BLOOM: I think his mental condition

at this point is directly relevant to this.

MR. GOETTEL: Undoubtedly it goes with your case. The problem with it is you brought out that he's been in several fights when he was in Matteawan, so it doesn't necessarily follow that it supports your case, the fact that he may have gotten into altercations elsewhere.

MS. BLOOM: That's not really what we're going into.

MR. GOETTEL: I will hear it through and then decide whether it has any relevancy.

Q Would you describe what happened?

A Well, I was in the room tha [illegible] am assigned to on the transfer unit and I was nervous, and I ran out. I ran out of the cell because I felt like someone was eating me up, eating me up inside, and I went to the kitchen and got a knife, a butter knife, and I was going to cut my stomach open, and I had hit the hall with my fist.

I broke my hand, and I blacked out then. I can only say what was told to me after that, what the report on the disciplinary report read.

Q Do you feel that you want to return to

Matteawan?

MS. SILVERMAN: Objection.

MR. GOETTEL: Why are the witness' desires relevant? Do you believe that he is in a position to medically evaluate what is good for him? I could see the state bringing out --

MS. BLOOM: I think his comments are relevant regarding his mental condition.

MR. GOETTEL: I have a lot of reservations about it, but I think I will allow it again for the time being and see subsequently whether it does have any relevancy.

You may answer that question.

A I feel I need medical help.

MS. BLOOM: That's all.

MR. GOETTEL: Cross examination?

CROSS EXAMINATION

BY MS. SILVERMAN:

Q Mr. Gulley, you testified you were serving in 1968 a conviction for robbery and burglary and received a term of zero to ten, is that correct?

A Yes.

Q Do you have any other prior convictions in this state?

A Yes.

Q What would those be for?

MS. BLOOM: I would question the relevancy.

MS. SILVERMAN: I think it goes to the witness' credibility.

MR. GOETTEL: We have such huge credibility problems considering his mental state that I don't know that it adds an awful lot to it. However, I will allow it.

A Yes, I was in Elmira Reformatory and from there, I was sent to Attica Prison.

Q This is a different charge?

A Yes.

Q What was that conviction for?

A Petty larceny and I don't really remember.

Q You were transferred from Elmira Reformatory to Attica?

A Yes.

Q How much time did you serve in total on that conviction?

A All of it except twenty-eight days, I think.

Q What term did you receive?

A Zip five.

Q Did you have any other prior convictions other than this one you just testified about?

A Only juvenile.

Q Were you at Attica during the riot?

A Yes.

Q What part, if any, did you play in the circumstances that developed at Attica?

MS. BLOOM: I object. I think it's totally irrelevant.

MR. GOETTEL: I suspect it is, but just as it may go to his mental condition when in prison there, as you were bringing out with other questions, I think I will have to allow them the same latitude I allowed you.

A I didn't quite understand what you mean.

Q What part, if any, did you play in the riot at Attica?

A I was an inmate in Attica.

Q Were you near the disturbance?

A Yes, I was out in the yard.

Q You observed the disturbance?

A Yes, I saw what was the disturbance.

Q Were you involved in any altercations during the disturbance?

A I got beat. I got beat up. I got shot at.

Q What happened after the disturbance? Did you remain at Attica?

A No, I was transferred to Greenhaven Prison, Correctional Facility.

Q Where did you go from there?

A They transferred me back to Attica.

Q How long did you stay at Greenhaven?

A Ten months.

Q What period of time was that, from when to when?

A From December -- from September 14th until --

Q What year?

A '71.

Q To?

A To '73 -- '72.

Q '72 what month was that?

A I went down there the day after the riot which was September 14th. I stayed ten months.

Q So you came back sometime in July to Attica?

A Yes.

Q Do you drink alcohol, Mr. Gulley?

A Do I drink? On the street, yes.

Q Did you ever obtain any alcohol while incarcerated at Matteawan?

A No, not at Matteawan.

Q What about the Transfer Unit?

A No, not at the Transfer Unit.

Q What about the D & E Unit?

A No, not in the D & E Unit.

MS. SILVERMAN: I have no further questions, Your Honor.

MR. GOETTEL: I have one question of the witness or one line of questions.

Mr. Gulley, during your current sentence which I gather you have been serving for seven or eight years on a zero to ten, have you ever appeared before a parole board for parole consideration?

THE WITNESS: Well, I appeared, I think, three different times before the parole board.

MR. GOETTEL: What was the last action taken in your last parole hearing?

THE WITNESS: I didn't go down.

MR. GOETTEL: You didn't go to it?

THE WITNESS: No, they called me, but

I didn't go.

MR. GOETTEL: Where wereyou being held at that time?

THE WITNESS: I was in Matteawan.

MR. GOETTEL: Are Matteawan patients allowed to appear before parole boards?

THE WITNESS: Yes, sir.

MR. GOETTEL: Do you know of anyone who, while still committed to Matteawan has been parolled?

MS. SILVERMAN: Objection to that question.

MR. GOETTEL: Well, I think it goes to a question of whether the patient is malingering and it's my understanding, and it seems to make sense to me, that if somebody has been committed to Matteawan because of his mental condition, it would be incongruous to find him acceptable for parole and if the patient realizes that by continuing his treatment at Matteawan, he is losing his opportunites for parole, it would seem to me to make it less likely that he is faking his condition and that's the reason I'm asking the question.

Now, he may not know. He may not be competent to answer the question.

MS. BLOOM: That was essentially the basis for my objection.

MR. GOETTEL: Obviously, his knowledge is not conclusive in any event. It's really a question I would be more interested in directing to a state witness who would have a greater knowledge.

But I will at least allow it as showing the witness' state of mind because if the witness believes that he can be considered for parole while in Matteawan even if he is wrong, then he doesn't have the same inhibition on being here.

Conversely, if he believes that he cannot be paroled when in fact he can, this might show a motivation.

I am overruling your objection on my question having explained the reason for it, and I am asking you, Mr. Gulley, do you know of anyone who, while he was a committed patient at Matteawan, obtained parole release?

THE WITNESS: No, sir.

MR. GOETTEL: Does anyone else wish to ask any further questions?

MS. BLOOM: No.

MS. SILVERMAN: No.

MR. GOETTEL: You are excused, Mr. Gulley.

(Whereupon, the witness was excused and withdrew.)

oOo

MR. GOETTEL: Call your next witness.

MS. BLOOM: Mr. Cruz.

HECTOR CRUZ, after having been duly sworn, assumed his seat as a witness, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BLOOM:

Q What is your age?

A Thirty-five.

Q Where are you currently incarcerated?

A Now, in Transfer Unit -- what's the name, Transfer Unit, at Beacon.

Q In 1961, were you convicted of a crime?

A Yes. That was murder in the first degree.

Q What sentence did you receive?

A I got the death penalty.

Q Where were you originally incarcerated?

A Ossining.

Q How long did you stay at Ossining?

A Between one year and eighteen months, something like that.

Q Was your sentence changed?

A Yes.

Q What sentence did you receive?

A I got life. I got commuted. I got life.

Q How long did you spend at Attica Correctional Facility?

A How long?

Q Where were you transferred to from Ossining?

A I went down -- I got transferred to Attica.

Q How long did you stay at Attica?

A I think '73 -- '63 to '73.

Q Did there come a time in 1973 when you were placed in segregation in Attica?

A Yes.

Q Do you know why you were placed in segregation?

A They put me in there for investigation, you know, some kind of investigation.

Q How did you feel while you were placed in segregation?

A It was a day go by, I feel depressed. I feel like I got sick.

Q Did you do anything to yourself?

A Yeah, I tried to hang up (indicating).

MR. GOETTEL: You stabbed yourself?

THE WITNESS: Tried to kill myself.

I tried to hang up.

Q When did you leave Attica?

A I think '73. I think November or something like that.

Q Where did you go?

A Came down here to D & E.

Q Did you see a doctor or go to court before you left Attica?

A I see one doctor, you know. I didn't went to court.

Q How long did you stay at D & E?

A About forty days. Between thirty and forty days.

Q Were you placed in a cell at D & E or a room?

A No, it was in the hall, you know. They got four or five people there.

Q Did you see a medical doctor?

A Yes.

Q How often?

A A few times, you know.

Q Did you see a psychiatrist?

A I remember I see it a few times, too.

Q Did you receive medication?

A Yeah, I think I got some kind of medication to sleep or something.

Q Did you see a psychiatrist or go to court before you left D & E?

A I think two doctors, two or three doctors.

Q Where did you go from D & E?

A I went down to Matteawan.

Q Would you describe how you spent a typical day at Matteawan? What did you do?

A Well, you get up in the morning, you know, and you go to mess hall. When you're coming back, they give you medication and you be in the ward sometimes. Sometimes you work. Sometimes you watching T.V. and walk back and forth, you know, or sometimes you go and sleep on the floor.

Q Did you receive medication?

A Yes.

Q How often a day?

A I used to get three times a day and used to get some for sleep, four times.

Q Did you see a medical doctor?

A Yes, I usually see him every month, but he called me to 21.

Q Was that a medical doctor or psychiatrist?

A No. I don't know of that thing. All look the same to me.

Q How often would you go to see the doctor?

A I think once a month he called me over to 21 Building.

Q How long did you talk to the doctor when you went to see him?

A A few minutes.

Q What kind of a conversation did you have with the doctor?

A He asked me how I feel, if I'm working, if I take medication and if I get in any trouble and if I want to go back to prison.

He asked me a few times if you want to go back. I say I don't feel good and he told me he want to stay, you know.

Q Did there come a time when you requested to leave Matteawan?

A Yeah, one time.

Q When was that?

A That was, I think, '74.

Q Do you remember the month?

A I think September or something like that because I went to a jail ward, and I got beat up.

Q Why did you want to leave Matteawan?

A Because the more brutality.

Q Did you see a doctor before you left?

A Yeah, one.

Q How long did you talk to that doctor?

A A few minutes, just went --

Q What did you discuss with the doctor?

A (No response)

Q Just take it very slowly and tell us what you discussed with the doctor.

A Just tell him I want to go back.

Q Where did you go?

A Clinton.

Q Do you remember when you went to Clinton?

A I think I went to Clinton about -- I think two weeks before -- no, the month was September.

Q September of 1974?

A Something like that, I don't know.

Q Where were you placed in Clinton?

A I got put in the cell for a few days, you know.

Q How many hours were you locked in the cell?

A Twenty-four hours a day.

Q How long did you stay in Clinton?

A About two weeks, something like that.

Q Did you receive medication?

A No, I got sick in the cell.

Q What happened to you?

A I keep thinking, you know, about doing something.

Q Can you describe another way how you felt while you were placed in thecell?

A Be thinking about, you know, hang up, caught up. It was something, walking back and forth all night.

Q When did you leave Clinton?

A About two weeks after I went for here, I don't know.

Q Where did you go?

A I think I came down to D & E again.

Q Were you placed in a cell in D & E?

A No, it was in the dormitory.

Q Did you receive medication?

A Yes.

Q How long did you stay in D & E?

A D & E? About fifty or fifty-five days.

Q Did you see a psychiatrist?

A Yes, I used to see him.

Q How often?

A I think about four or five times I see him.

Q Did you see a psychologist?

A Yes.

Q How often?

A The same time, you know.

Q Where did you go from D & E?

A I went back to Matteawan.

Q Were you placed in a cell at Matteawan?

A No, I was placed in the ward, like a ward, A ward.

Q Was that an open ward?

A Yes.

Q Did you receive medication?

A Yes.

Q How many times a day?

A I think for go to sleep. No, at that time, no. The first day I was in there, that he told me that I got a mood, you know, and he put me in the jail ward.

Q How many times a day did you receive medication?

A About four times.

Q How often did you see a psychologist?

A What are you talking about now?

Q At Matteawan.

A They got a new program now, therapy. I used to go to therapy twice a week.

Q How often did you see a psychiatrist?

A About twice a week. I'm talking about not the doctor you see every month, what's his name. Like some kind of therapy, you know.

Q You saw a psychologist two times a week for therapy?

A Yes.

Q How often were you evaluated by a psychiatrist?

A Once a month.

Q Did the same doctor evaluate you each time?

A I think different man.

Q How long did the evaluation last?

A A few minutes.

Q What was the smallest?

A About three, four, five minutes.

Q What was the largest amount of time that the evaluation lasted?

A Between five or six, seven minutes.

Q What did you normally discuss with the doctor?

A He asked you how you feel, if you working, if you need medication, if you want to go back. That's the only question he asked you.

Q Were you involved in a fight in October, 1975 in Ward 6?

A Yes.

Q Will you describe what happened?

A It was John -- what's his name, Mitchell, you know, like he got sick and he grabbed a mop ringer, you know, breaking things and we try to stop him and we were grabbing, so seargent came out with a chair and tried to block him and then we all came to him and try to grab him sideways.

That's how it was about ten, twenty officers came and hold on the ward and everybody got confused and everybody told -- between one another and, you know, everybody went.

A fight broke out, you know, officer and me.

Q Where were you placed after the fight?

A I was sent to a jail ward.

Q How long did youstay in the jail ward?

A Between two and three days. About four, three or four days.

Q Did you receive your medication?

A Yes. In the jail ward, yes.

Q Where did you go after those two or three days in the jail ward?

MS. SILVERMAN: Three or four.

A About three or four, yeah. Let me see. One Monday morning about five-thirty, he came over to see me and asked me that if I remember what happened in Ward 6.

I said I remember it was a fight there, you know, a lot of officers and he says, "You know, you're in big trouble," something like that, but he walk away.

I talked to the doctor about maybe one or two minutes and I walk away. Then on that day, about one seargent and two officers came over and say I got to go to another building.

Q How many days after the fight did you see the doctors?

A About two days after, two or three days. It was a Monday that I see him.

Q About three days after the fight you saw the doctors?

A Between two and three days.

Q How many days after you saw the doctors were you placed on the Transfer Unit?

A The next day.

Q Did you have any other kind of hearing prior to the transfer?

A With the other --

Q Besides seeing the doctors, did you have any other kind of hearing?

A No, I didn't see nobody else.

Q Are you currently on the Transfer Unit?

A Yes, now.

Q Do you receive medication?

A No, not the -- I don't receive no more medication. He cut me out.

Q Do you see a psychiatrist?

A No, you don't got any down there.

Q Do you see a psychologist?

A No.

MS. SILVERMAN: I'm going to object to that. I mean, he's on the Transfer Unit because of this hearing, so I don't think it's fair to --

MR. GOETTEL: We are back to the Transfer Unit which we all agree is not of consequence of the conditions at the prison to which he would be transferred if moved. That has to be compared to the conditions of Matteawan.

Q How do you feel now as compared with when you left Matteawan?

A I don't know.

MS. SILVERMAN: Objection.

MR. GOETTEL: I will allow it.

A I feel sick. At night time, I can't go to sleep. I feel the prayers, you know, and I didn't get no kind of medication because they don't got nobody down there, no doctor to help you.

MS. BLOOM: That's all.

MS. SILVERMAN: I have no cross-examination.

MR. GOETTEL: I have one line of questioning.

On this day, Mr. Cruz, when the five doctors came on the Monday to see you, how long did they spend in talking to you?

THE WITNESS: About one or two

minutes. One told me, "How do you feel," you know, "Do you remember that you had a fight about something happening in 6 Ward."

I said I can't remember, you know. I said I was, you know, that day I was sick, you know, and he asked me with three or four, a few questions and then walk away.

MR. GOETTEL: Did all five doctors talk to you or only one of the five?

THE WITNESS: No, about two.

MR. GOETTEL: Do you know who the two doctors were who talked to you?

THE WITNESS: I know I think Chakir was in there. I only know a few name doctors.

MR. GOETTEL: Did you have a regular ward doctor who treated you before you were put in the Transfer Unit?

THE WITNESS: He got a doctor there named Factora or something like that.

MR. GOETTEL: Doctor Factora was the doctor you saw most often in the ward?

THE WITNESS: I just saw him a few times in the ward. I just saw him one time.

MR. GOETTEL: Was Doctor FActora

present during this interview with the five doctors?

THE WITNESS: I know he was there. I think he was there.

MR. GOETTEL: Did he ask you any questions?

THE WITNESS: I think about two doctors asked me questions.

MR. GOETTEL: Was Doctor Sweeney present?

THE WITNESS: I didn't see him.

MR. GOETTEL: That's all I have. If there are no further questions, the witness will be excused.

(Whereupon, the witness was excused and withdrew at 12:40 p.m. and a luncheon recess was taken.)

MR. GOETTEL: Call your next witness.

MS. BLOOM: Mr. Dunleavy.

GEORGE DUNLEAVY, after having been duly sworn, assumed his seat as a witness, was examined and testified as follows:

MR. GOETTEL: State your name.

THE WITNESS: George Dunleavy.

DIRECT EXAMINATION

BY MS. BLOOM:

Q What is your age?

A Thirty-six.

Q Where are you currently incarcerated?

A Matteawan State Hospital.

Q In April of 1974, were you convicted of a crime?

A Yes.

Q What was that crime?

A Attempt murder and assault and possession of a weapon.

Q What sentence did you receive?

A Six and two-thirds to twenty years.

Q Where were you housed immediately prior to this sentence?

A Well, right at the time of sentencing, I was in the Chrysler's (phonetic) Intervention Unit at the Branch Queen (phonetic) House of Detention. I had been there for about five months on medication.

I had been transferred there from Ryker's Island Mental Observation Unit where I was also on medication and prior to that, I was at the New York City County Jail called the Tombs in the Mental Observation Unit.

Q Did you attempt to commit suicide while you were housed in these institutions at any time?

MS. SILVERMAN: Objection.

MR. GOETTEL: On what grounds?

MS. SILVERMAN: I don't know what "attempt to commit suicide" means. If he did something to himself, I think he could describe that.

Q Did you do anything to harm yourself?

A Yes, I got a little over a hundred sutures at different times as a result of cutting myself.

Q Where were you originally incarcerated once your sentence commenced?

A I was taken to Greenhaven a couple days after sentence and I was put in the hospital at Greenhaven and following that morning, I was transferred to the D & E Unit at Fishkill.

Q Would you describe what the physical layout of D & E was at that time?

A At Fishkill?

Q At D & E.

A It's a long corridor, maybe 150, 200 feet with a recreation room on either end and along the corridor there are rooms. Some was two-men rooms up to about seven or eight-men rooms, but there was no doors on there and in the middle of the hallway, there was a nurse's station and an office for the officers and there was a mess hall upstairs. We didn't have to leave the unit.

Q Would you describe how you spent a typical day at D & E?

A Well, we get up somewhere between six and seven o'clock and eat breakfast. If we wanted, we could shower or watch television or there was a -- I don't know if he was a social worker or whatever, a man named Mr. O'Leary would come on the ward several times a week to hold sort of a therapy session.

The officers were available if you wanted to talk to them. A doctor, I believe it was Doctor DeSole (phonetic) was usually on the unit almost every day.

A psychologist was there. You could watch television or go and lay down in your room and they would take us to the yard usually at least once a day.

We would go to bed somewhere around ten o'clock or some nights eleven o'clock. That's pretty much what --

Q Did there come a time when you saw two outside psychiatrists at D & E?

A Yes, after I was there several weeks, I saw two doctors who said they were sent by the court.

Q How long did you speak with them?

A Somewhere in the neighborhood of a half hour to forty-five minutes.

Q What did you discuss with them?

A Well, they first asked me how I felt then. They examined my arms for scars where I had injured myself before and they asked me how I felt at the time this happened and how I felt then.

They asked me about the crime that I was in jail for, whether I had been in any hospitals before, what type of medication I had received before, what I was getting then. Pretty much those types of questions.

Q When did you leave D & E?

A I believe it was in June of 1974.

Q Where did you go?

A To Ward 8, Matteawan.

Q Would you describe a typical day that you would spend in Matteawan?

A Well, in this ward, Ward 8, the reception ward, it's not quite the same as a regular ward. I was put on Ward 11 a week or so after I was on Ward 8 and it's sort of like two tier.

Downstairs like is a large recreation room with tables and a T.V. You were allowed to have a radio, record player. There's usually three officers on the ward.

At thattime, there was a nurse on the ward. The doctor would pass through the ward usually every day. I was given a job at the time as the law clerk, and I was off the ward from about eight in the morning until about eleven and then again from one 'till three.

We was allowed when we came back from the yard, if it was good weather, we were allowed to go out in the yard.

We could watch television. We could go out on the porch and at night, we would go upstairs to the upper level which is a dormitory.

The doctor is usually around each day. Sometimes, it'd difficult to see him. He has quite a few patients and usually he has more than one ward. But if there was a problem, you could get the officer or possibly a nurse or somebody to talk to if you had a problem, and the same thing at night.

You're not closed in. The officers are right in the dormitory with you if there is a problem.

Q Did you receive medication?

A Initially, I refused to take medication. I have a fear of medication. I later was able to talk with a Doctor Chakir. He recommended medication, and I believe at one time, I spoke to Doctor Sweeney about medication, and I did start taking medication.

Q How often would you take medication?

A I think I started twice a day and then I went up to four times a day.

Q How often did you see a medical doctor?

A You wouldn't see a medical doctor unless you made a complaint and went to sick call. You could go to sick call every day.

Q How often would you see a psychologist?

A Well, up until, I think, February of this year, practically never. I made several requests to Doctor Kaplan, but I think it was February or March of this year, they initiated a program where we could see psychologists, and I started going to see a psychologist, Martin Ogulnick.

Q How often would you see him?

A I was scheduled to see him twice a week.

Q How often would you see a psychiatrist?

A Well, I say a doctor would usually pass through the ward daily, but to actually sit down and talk with a doctor, it would vary. Sometimes somewhere in the neighborhood of three to six weeks you would be called for what's called evaluation.

Q Would you be evaluated by the same person each time, the same doctor?

A Not necessarily, no.

Q How often would you be evaluated by a doctor?

A Well, I say usually somewhere in the area of three to six weeks, you would be called up to Ward 21 which is where they had their offices.

Q What was the minimum period of time that this evaluation would take and what would be the maximum period of time that this evaluation would take?

A Well, I have been in there less than five minutes and I have been in there about fifteen or twenty minutes.

Q What would the nature of the conversation be with the doctor during this evaluation?

A Generally he would ask you how you felt, what type of medication you were on, how you felt about being here as opposed to prison, whether you felt if you were ready to go back to prison.

Q During this period of time and we are speaking now of the spring of 1974, what job did you have at

Matteawan?

A I was institutional law clerk.

Q What were your duties as law clerk?

A To prepare motions for the other patients and the inmates in the other building relating to their criminal conviction, to advise them as to the nature of the law library and refer them to the particular books if they wanted any books and subsequently, it became -- I don't know if it was my job, but it became my function to carry complaints of the inmates to the administration because most of the time they were afraid themselves to directly go to administration, so they told me.

So I carried their complaints to the administration hoping to avoid going to court with them.

Q What happened on March 16th, 1975?

A I was accused of escaping from Matteawan.

Q What happened on March 18, 1975?

A I was placed in the jail ward about three o'clock in the morning. Mr. Ternullo was there with Doctor Sweeney and Mr. Metz. Doctor Sweeney gave me a physical examination, and he spoke to me and tried to reassure me that nothing was going to happen.

Mr. Ternullo did pretty much the same thing. Then I was placed on the cell in the jail ward, Ward 3.

Q How long did you stay in that cell?

A About five or six days.

Q Where were you placed after that?

A Well, after I was there about five or six days, the cell began to get to me and the officer knew me, so he called the doctor and they put me on Ward 2 which is the hospital ward in the restraining sheet.

Q When you say that the cell began to get to you, what do you mean?

A Well, I have trouble remaining in a closed place. I start to have trouble breathing. I get very nervous. I can't sit still, and I have trouble thinking clearly, and I just get very excited and agitated.

Q How long were you kept in the hospital in a restraining sheet?

A Well, I think I was in a restraining sheet until the following day, and I believe that I was put in a straight jacket and moved to a back room.

The door was left open though, and I was placed on special watch.

Q How long were you kept in a straight jacket?

A About four or five days until I saw Doctor Sweeney and he told them to take me out of the jacket.

Q Where were you placed then?

A Well, I was kept in the hospital for about a week. Doctor Sweeney was going to give me some sodium ammetol (phonetic) tests which he did and then I was sent back to Ward 11 which was the ward I am accused of escaping from.

Q Did you receive medication at this time?

A Yes.

Q Do you know if your medication was increased or decreased?

A I really don't know. It's liquid. You get it in a cup, but it didn't have too much more effect on me.

Q When were you next evaluated by a psychiatrist?

A Within a week or so. Maybe ten days.

Q Who evaluated you?

A Doctor Feldman.

Q Was he your regular ward doctor?

A Yes, he was -- at that time, I believe he had recently been assigned to Ward 11. I did see him two days before evaluation.

Miss Ferrato (phonetic), the social worker was on the ward. She was making a phone call for me because we had a problem with my mail and at that time, I asked Doctor Feldman to decrease my medication and he said he wouldn't do it.

In fact, he thought he should increase it. He said I didn't look too good and then I saw him at evaluation, I think two days later.

Q How long did your evaluation last? This would be April of 1975.

A About five minutes.

Q What did you discuss with him?

A Well, he asked me about my alleged participation in the escape, how long it had taken, the extent of my involvement and that was pretty much it.

Q Did you have any other hearing after that evaluation?

A No.

Q Where were you placed after that evaluation?

A Well, after evaluation, I went back to the ward and a couple days later, I believe it was a Friday, about six officers came to the ward and told me to come with them, I was going to the Transfer Unit.

I wasn't even allowed to take my personal belongings. They said it would be shipped over after me which it was, but I was taken then from Ward 11 to the Transfer Unit they called it then, Fishkill Correctional

Facility.

Q Did you receive medication on the Transfer Unit?

A Yes.

Q How long did you stay in the Transfer Unit?

A I'm not sure. It's maybe a week. Maybe a little less.

Q How did you feel there?

A While I was at the Transfer Unit?

Q Yes.

A Well, I was pretty confused, pretty disgusted with everything. I don't know. It's hard to explain. It's hard to put into words. I just felt that whatever little progress I had made I had ruined everything again.

MS. SILVERMAN: Objection to this as really not responsive.

MR. GOETTEL: Sustained.

Q Did you see a psychiatrist or psychologist while you were in the Transfer Unit?

A No, I didn't.

Q Where did yougo from the Transfer Unit?

A I was taken to Greenhaven.

Q When would that have been?

A The first, second or third day of May, the early part of May.

Q Where were you placed at Greenhaven?

A In reception. I think it was J block or H block.

Q How long did you stay there?

A I was there about four days.

Q Where were you placed then?

A Well, I was put in the hospital and placed on medication after I was found bleeding from my arms in my cell.

Q On the reception ward?

A On the reception ward.

Q When you first got to Greenhaven, did you get any medication?

A No, I went on sick call a day or so after I was there, and I told the medical doctor that I had been on medication here, and I asked him if I could get some.

I felt nervous. He said thathe could only give me enough medication for a few days. I would have to be put on the list to see a psychiatrist and that evening, the officer brought me a bag with some pills in it. It was supposed to be for three days, but it didn't last three days.

Q How long did it last?

A I took -- I guess about a day and a half, two days the most.

Q When did you try to hurt yourself, how soon after you got to Greenhaven?

A About four days, five days, something like that.

Q What did you do to yourself?

A Both my arms were cut, and I had to get stitches.

Q How many hours were you locked in your cell when you were placed in the hospital ward at Greenhaven?

A In the hospital ward?

Q Yes.

A I was in there mostly all day.

Q Did you receive medication there?

A Yes. I don't know what I got, but I got quite a bit. It was hard to stay awake.

Q Did you see a psychologist?

A No, I saw a psychiatrist.

Q How many times did you see a psychiatrist?

A I saw the same doctor about five -- four or five times and he told me he was going to send me back to Matteawan.

Q How long did you talk to him each time you saw him?

A Well, the first time it was pretty long, almost an hour and I guess about a half hour after that each time.

Q How long did you stay at Greenhaven before you were transferred back to Matteawan?

A I was gone about a month all together from here, so I guess I was at Greenhaven about three weeks or so.

Q Were you interviewed by psychiatrists before you were transferred from Greenhaven back to Matteawan?

A Yes, the doctor who I had been seeing told me that he was going to send me back to Matteawan but Matteawan didn't want me.

MS. SILVERMAN: Objection.

MR. GOETTEL: Sustained.

A So I was subsequently seen by two doctors who told me that they were sent by the court and a couple days after I saw them, I was transferred back here to Matteawan.

Q Where were you placed when you returned?

A I was initially put on Ward 8. I was there for about a half an hour talking with the mental health lawyer and Doctor Shaeffer came and told me I had to go to Ward 3 which is the jail ward or medical seclusion ward.

Q How did you feel when you returned to Matteawan as compared with when you left Matteawan about a month earlier?

A Well, I felt -- I guess the best way to describe it would be relieved. I felt a lot of pressure was taken off me.

MS. SILVERMAN: I move to strike that. It's unresponsive. I take it by how he feels, she means more of his medical condition.

MR. GOETTEL: I think we are dealing with a psychiatric condition which goes to emotional responses. I will allow it.

Q Would you describe Ward 3 which is the ward that you are on right now?

A It's also sort of a double decker ward. It's two long corridors with individual cells going off on each side of the corridor. There are two officers upstairs at the end of the corridor.

Downstairs there are two officers in the middle of the corridor. There is a television upstairs and downstairs. We're allowed to have a radio.

I should say the census (phonetic). I should say I'm a census patient as opposed to being locked in twenty-four hours a day.

We are allowed to have our own radio and other personal belongings. There is a nurse downstairs. Doctor Chakir is there almost every day in the morning.

Our door is not locked. I'm allowed to go off the ward during the day to go to work.

Q How often are you permitted to have visitors?

A You mean from the outside?

Q Yes.

A Any time, any day.

Q How often are you now evaluated by psychiatrists?

A Well, I don't know. It's not like when I was on the open wards because now Doctor Chakir, as I say, is there almost every morning and generally I speak to him each morning.

I spoke to him this morning for about an hour before I came up here.

Q How often do you see a psychologist?

A Well, I'm going now once a week to see Martin Ogulnick.

Q Would you describe the conversation that you had with Doctor Chakir in the middle of October of this year?

A I had went into Doctor Chakir's office to speak to him and he told me he had had a conversation with Charlie Ammens (phonetic) who is the mental health lawyer and another patient, Valentine Negron and he said he had spoken to them and he was relating to me what he had told them which was that the administration did not like all the --

MS. SILVERMAN: Objection.

MR. GOETTEL: Sustained. Miss Bloom, I call your attention to the fact that we apparently have another witness present.

MS. SILVERMAN: That is Doctor Feldman. I do plan to call him as a witness.

MS. BLOOM: I would move that he be excused. If I can just comment on that, the answer to that question -- the point that I am trying to get at is patients havecommented that they are threatened with transfer, that transfer is used as a threat and this affects their state of mind.

What I'm asking Mr. Dunleavy to testify to is statements that were made to him by doctors so that we can establish what his state of mind is at the moment.

MR. GOETTEL: Well, again I think it goes to a question also of control. I would assume that the doctors, all the doctors at this institution are persons of authority and to that degree, any statements they made could constitute admissions admissible against the institution.

But I think we have to know specifically what doctor we are talking about.

MS. BLOOM: We were talking about Doctor Chakir.

MR. GOETTEL: You wanted to tell us what Doctor Chakir said to you?

THE WITNESS: Yes, sir.

MR. GOETTEL: I will allow that. Go ahead.

A He said that he had advised the other patient and Mr. Ammens who is the mental health counsellor at the time and he was now telling me that the administration did not like all the court action.

If it didn't cease, he might recieve orders to transfer us to prison. I had a little bit of an argument with Doctor Chakir about that, and I subsequently called the attorney for the Prisoners Rights Project and informed him of thatand he asked me to give him an affidavit which I did.

Q What court action was being referred to by Doctor Chakir?

A It's the suit Negron versus Prizer pending before Judge Ward.

Q When did this action commence, this current lawsuit?

A I believe in October after the patient George Mitchell was involved in an altercation on Ward 6.

Q What happened the day after this lawsuit commenced?

A I was downstairs --

MR. GOETTEL: I'm confused as to this --

MS. BLOOM: This lawsuit, this one.

Q Can you describe what happened October 29th, the day after this lawsuit commenced?

MR. GOETTEL: To be technical about it, the Complaint was sworn to October 22nd.

MS. BLOOM: It was filed on the 28th.

A I don't know the exact date. I know within a day or so, speaking to you and seeing the papers.
I was downstairs in the jail ward and the phone rang. The officer told me to -- he held the phone and said, "Go

upstairs and get Perrelli. Doctor Sweeney wants to speak to him."

Carmine Perrelli was a patient on the ward with us and one of the --

MS. SILVERMAN: I object to this whole testimony here.

MR. GOETTEL: There is no question pending, so go on from there.

Q What happened after that occurred?

A Perrelli came downstairs. I was standing there when he spoke to -- he was addressing the person to Doctor Sweeney and he asked the person for the name and address --

MS. SILVERMAN: Objection to all this.

MR. GOETTEL: I'm having difficulty following who is speaking to who at this point.

MS. BLOOM: At this point, George Dunleavy is listening to Carmine Perrelli who is a named plaintiff speaking on the telephone to Doctor Sweeney.

MR. GOETTEL: He can't hear Doctor Sweeney.

MS. BLOOM: He can testify to what he heard Carmine Perrelli say.

MS. SILVERMAN: I object to that.

MR. GOETTEL: That would be hearsay. Perrelli is a plaintiff in this action. I assume he will testify.

MS. BLOOM: No, he won't testify.

MR. GOETTEL: How is this admissible?

MS. BLOOM: I can ask the question in a different way.

Q Did you speak with Doctor Sweeney that day?

A I didn't personally speak with him, no.

Q Did there come a time after that incident where you had occasion to speak with Doctor Sweeney about this lawsuit?

A I don't think I spoke with Doctor Sweeney personally about this one.

Q Did you speak with any other doctor personally about this lawsuit?

A Yes.

Q Who was that doctor?

A I spoke to Doctor Chakir and the morning of the phone call we spoke about, Doctor Masachuski (phonetic) came to the ward to speak to me.

Q What did he speak to you about?

A Well, I had --

MS. SILVERMAN: Objection.

MR. GOETTEL: What's the question?
Are you asking what --

MS. BLOOM: Doctor Masachuski is another psychiatrist and the same admissions would apply, I would gather.

MR. GOETTEL: He's talking now with Doctor Masachuski. Are you asking him what --

Q What did Doctor Masachuski say to you?

MS. SILVERMAN: That's what I'm objecting to.

MR. GOETTEL: I will allow it.

A He asked me did I know I was scheduled for evaluation that morning.

Q Is Doctor Masachuski the normal doctor that evaluates you?

A I don't think I ever spoke to Doctor Masachuski in eighteen months.

Q What did you say to him?

A I asked him had he been sent by Doctor Sweeney.

Q What did he say?

A He just looked at me. I turned around and walked away from him.

MS. SILVERMAN: Objection.

Q What do you feel this whole incident was about?

MS. SILVERMAN: Objection.

MR. GOETTEL: That's sustained.

Q Did you ever fear that you were being threatened with an evaluation that would result in a transfer out of Matteawan?

MS. SILVERMAN: Objection.

MR. GOETTEL: I will sustain that also.

Q Did any of the correctional officers indicate to you why Doctor Masachuski had come to see you?

MS. SILVERMAN: Objection.

MS. BLOOM: These are again agents of the hospital.

MR. GOETTEL: I will hear it first and then rule on it.

MS. SILVERMAN: I think a correction officer is getting pretty far afield from the psychiatric staff at Matteawan State Hospital.

MS. BLOOM: The hospital staff correctional officers are as much involved in the therapeutic programs as the doctors.

MS. SILVERMAN: I don't know there is any evidence to that effect. In any event, I would object to that, and I would again state that I think that's taking it fairly far afield that the correction officers should bind the psychiatric staff at the hospital.

MR. GOETTEL: I have doubts that he would unless he happened to be a supervisory correction officer. Let's hear it first and I will rule on it then.

Which correction officer was it? What was his rank and what did he say?

THE WITNESS: His name was James Daniels. At that time, he was assigned as a regular officer on Ward 3. He was standing right there when I spoke to Doctor Masachuski.

He saw my reaction when Doctor Masachuski asked me if I knew I was scheduled for evaluation.

MS. SILVERMAN: I move to strike that.

MR. GOETTEL: That's not a statement. He said he could see what his reaction was.

MS. SILVERMAN: How does he know what the correction officer saw?

THE WITNESS: Because he subsequently

told me. He said he was afraid I was going to attack the doctor and he backed up and after I walked away from the doctor, he said he asked Doctor Masachuski, "Were you sent here by Doctor Sweeney," and Doctor Masachuski said, "Yes, what is this all about?"

MS. SILVERMAN: I object to that as double hearsay.

MR. GOETTEL: That, I can't allow.

Q After this conversation occurred, did you have any fears?

MS. SILVERMAN: Objection to that question.

MS. BLOOM: I think that he can testify to his feelings. Again we are talking about psychiatric state of mind.

MR. GOETTEL: Except that the state of mind we are concerned with is the affect upon being transferred out.

I don't know that the possibility of transfer out which I would guess exists for all patients is a consideration in the lawsuit.

MS. BLOOM: It's certainly one aspect

of it. We feel that the practice is totransfer out for punitive reasons and individuals are placed in fear of engaging in certain kinds of activities because transfer may result and therefore, his reaction to this situation --

MR. GOETTEL: I think you are mixing two separate possible causes of action. Your essential cause of action here is that persons are being transferred punitively.

What you are now attempting to extract would be a possible matter for consideration within the framework of the Negron case of the use of the threat of transfer for coercive purposes.

I don't see this having any place in this lawsuit though. How do you see it?

MS. BLOOM: Let me just make one comment. If it's established that transfers are used as a punitive measure, then this transfer, this act of transfer is going to have affects beyond the actual transfer of individuals.

It's going to instill in other individuals the threat that the same thing can happen to them if they engage in certain kinds of behavior.

MR. GOETTEL: You are saying not only are they using transfer as a punitive measure, but they are using the threat of transfer to punitively inhibit other patients?

MS. BLOOM: And in this instance, what we're saying is that it's used to inhibit patients in exercising Constitutional rights to engage in litigation.

MR. GOETTEL: I don't think that's within the framework of this case. It may fall closer to the Negron case.

MS. BLOOM: It is in the motion papers.

MR. GOETTEL: Is it?

MS. BLOOM: Yes, it is.

MS. SILVERMAN: I object to that question really because it seems to me that when it's asking somebody what did they feel, they are calling for the operation of his mind, and I don't think it's really important what he thought.

I think it's only important what occurred. It's up to them to make some legal argument that a certain state of facts might naturally follow given the established state of facts, but I don't really think that that's a proper question.

MR. GOETTEL: I think you're right. I think that his personal reaction to something is certainly not conclusive on whether it should cause that.

MS. BLOOM: I would agree that an individual's state of mind is conclusive of nothing, but it seems to me that an individual's state of mind is directly relevant to their mental state and since we are talking about a mental state and whether or not individuals have recovered, it seems to me that how someone feels is an essential aspect of this case.

MR. GOETTEL: I think that that's more a matter of argument as Miss Silverman states. I think it would be proper to ask the witness whether he wanted to be transferred and if he says no to that, then I think it's apparent that if he is threatened with transfer, he has to be apprehensive. It follows naturally.

MS. BLOOM: It doesn't establish that he was actually threatened with transfer.

MR. GOETTEL: That's a matter of fact. You can ask him if anyone threatened him. You're asking him how he felt after this particular incident occurred.

MS. BLOOM: I would simply state for the record that I do feel that the patient's mental state of mind is directly relevant. I am asking --

MR. GOETTEL: It's certainly directly relevant once he's removed from here because you are arguing that there is a Constitutional loss by being removed from the hospital and sent back to prison.

I don't know that his feelings about worrying about having this occur to him is germane.

MS. BLOOM: I think I can establish that with another witness. Let's proceed.

MR. GOETTEL: I think it's certainly something that you can argue in the basis of any proof that transfers are threatened and that the patient doesn't want to go.

THE WITNESS: Your Honor, could I just say something?

MR. GOETTEL: I don't think you better. The record gets confusing enough as it is with the lawyers arguing.

THE WITNESS: I don't want to argue. I just want to say I asked Miss Bloom's office to bring this lawsuit.

MS. SILVERMAN: I would object to this.

THE WITNESS: If it's off the record, because I think --

MR. GOETTEL: We are on the record right now.

MS. SILVERMAN: I think it's best if he takes it up with Miss Bloom subsequently.

Q Did you want to be transferred at this time?

A No. When I spoke to my doctor twice that morning, he said nothing about it.

Q He said nothing about the fact that you were to be evaluated?

A No, and I subsequently called him on the phone and he knew nothing about it.

MS. SILVERMAN: I am going to object to that again as really not --

MS. BLOOM: THis is what he did. He can testify to his actions.

MS. SILVERMAN: He said what somebody said to him.

MR. GOETTEL: I think to a degree, you get a verbal act here. If the doctor in charge of his treatment states that he is not aware that the person is being evaluated for transfer, and if, in fact, he is being evaluated for transfer but by a different doctor -- of course, you have three possibilities.

One, the doctor never said it. Two, the doctor said it but it wasn't true and I think that's probative; or, three, the doctor said it and it was true to the doctor's best knowledge, and that's probative.

I will allow it. Which doctor was this who said he was unaware you were being evaluated?

THE WITNESS: Doctor Chakir, my regular ward doctor.

MR. GOETTEL: You, of course, Miss Silverman, are free to call Doctor Chakir to rebut these statements.

Q How often are you evaluated now?

A As I say, I don't really know because I speak to Doctor Chakir fairly regularly. Whether he uses that as evaluation, I don't know.

It's not formal like before. On the open ward, I would be called and told I was being evaluated, but with Doctor Chakir, he doesn't actually say, "I'm evaluating you."

He just sees us -- I see him pretty regularly, almost every day.

MR. GOETTEL: Miss Bloom, you jumped over something here. We got to the point where the witness testified that he thought he was being threatened with transfer and now we have got to the point where he is being continually evaluated.

Am I to gather that in fact, he was not transferred?

MS. BLOOM: That's right. He was threatened with transfer and he was not transferred.

MS. SILVERMAN: At least that's the claim.

MS. BLOOM: That's the allegation.

Q What happened after you spoke with Doctor

Masachuski? Did you have an attorney visit?

A About twenty minutes later, Mike Kolb from your office came up and called for Perrelli and myself.

Q Did you speak with Michael Kolb?

A I did.

Q Where did you go after you finished that visit?

A Back to the ward and about an hour later, is when Doctor Masachuski came over.

Q Were you evaluated by Doctor Masachuski at that time?

MS. SILVERMAN: I'm going to object to that.

MR. GOETTEL: On the grounds that he's not competent to know whether Doctor Masachuski was evaluating?

MS. SILVERMAN: It seems to me that's a medical term, "evaluating," and not really a suitable question.

Q Did you speak with Doctor Masachuski?

A Yes.

Q How long did you speak to him?

A I think it was two questions, two statements. He said, "Did you know you were being evaluated this morning?" I said, "No. Did Doctor Sweeney send you here," and I walked away from him.

MR. GOETTEL: Who said, "Did Doctor Sweeney send you here"?

THE WITNESS: I did. I asked him had he been sent here by Doctor Sweeney because of the phone call earlier in the morning.

MR. GOETTEL: Did he respond to that?

THE WITNESS: He did to the correction officer, not to me.

Q Did Doctor Masachuski say to you initially when he met you at that time, "Did you know you were being evaluated this morning"?

A Right.

Q Was that his statement to you?

A Right. He was standing in the corridor of the jail ward, not in the office.

Q What happened after that conversation with Doctor Masachuski? Where did you go? Did you go back to the ward?

A I went back upstairs which is Ward 3, and I came back down about twenty minutes. I spoke to the officer and he told me what I said before, that he had spoke to Doctor Masachuski.

I then asked for permission to make a phone call to David Englander. I asked that Doctor Sweeney be contacted and if I could have a phone call to David Englander because I felt that at that time my transfer was imminent.

MS. SILVERMAN: Objection.

MR. GOETTEL: Sustained.

A In any event, the phone call was denied. I learned something from Dave Englander, but I won't go into it.

Q Where did you go after you spoke with Dave Englander on the telephone?

A I didn't get to speak with him. I was denied permission to call him.

Q Where did you go then?

A I went back upstairs where the rest of the patients were, I would say, a lot more agitated than I was.

MS. SILVERMAN: I move to strike that.

MR. GOETTEL: Sustained.

Q What patients were upstairs?

A You mean the names?

Q Right.

A Peter Perez, Carmine Perrelli, Louis Poveromo, Frank Callabrese, Angel Alamar, Ralph Bonier, Ronald Whie, Dennis Carlo.

Q Did any of these individuals come over to speak to you?

A Yes.

Q How many individuals came to speak to you?

A Four or five.

Q Did you speak to them about what had occurred with Doctor Masachuski?

A Yes, I did. I related to them what had happened.

Q Did you stay on the ward then?

A Yes.

Q Did you stay on the ward for the rest of the day?

A No, I subsequently had another patient make a phone call to your office and we got Mike and he came back that afternoon, and I related to him what had happened, and I asked him would he contact you and to include me as a plaintiff in lieu of the action that the other patients wanted to take which was everybody cut themselves, cut up, as a mass protest.

MS. SILVERMAN: Objection.

MR. GOETTEL: Sustained. I can't

follow it. I don't know what we're talking about.

THE WITNESS: This is the crux of this matter. That's why I asked you if I could say something before.

MS. BLOOM: There came a time right after this lawsuit was filed when Mr. Dunleavy was approached by Doctor Masachuski and told that he was to be evaluated.

MR. GOETTEL: That much I follow.

MS. BLOOM: After that occurred, he attempted to make a phone call to Dave Englander who is attorney for the Negron lawsuit and subsequently made a phone call to our office to attempt to contact us to become a named plaintiff in this lawsuit in an attempt to stop a possible transfer.

MR. GOETTEL: That much I follow.

MS. BLOOM: What he is talking about now is the conversation that he had with the attorney in our office who came to see him to speak to him about this matter.

MR. GOETTEL: How can that possibly be admissible?

MS. BLOOM: He is saying that he had an attorney visit him.

MR. GOETTEL: I think that's admissible but what he told the attorney wouldn't be admissible.

MS. BLOOM: What he said to the attorney, what Mr. Dunleavy said?

MR. GOETTEL: To his own attorney?

MS. BLOOM: I don't understand why his own words to someone else are not admissible?

MR. GOETTEL: Where are you going to go with it after that? Why are you taking it?

MS. BLOOM: We are just going to make a statement indicating that he communicated to the attorney his concern about what had happened. That's all.

MR. GOETTEL: All right. Assuming he did, but where does it go from there?

MS. BLOOM: We will continue.

MS. SILVERMAN: I don't feel that's relevant, what he expressed to his attorney.

MR. GOETTEL: If you are going to say that as a result of having an attorney visit, some sort of punitive action was taken against him, I can follow that.

But in that case, I am assuming that the communication was confidential and subsequently, you can't allege that the hospital officials knew what he told the attorney.

MS. BLOOM: No. All that I want to do is bring this to the conclusion and indicate that he was indeed not transferred, but that he was interviewed and became a named plaintiff because of this incident.

This caused him concern --

MS. SILVERMAN: I think that's in the way of argument.

MR. GOETTEL: If you are attempting to establish that the only reason he wasn't transferred was because he contacted an attorney and joined this litigation --

MS. BLOOM: This is our allegation.

MR. GOETTEL: I don't see how it falls within the framework of this lawsuit.

MS. BLOOM: Well, these are allegations in the motion papers. These are all in the motion papers.

MR. GOETTEL: He wasn't even a party

to the case at the time you made your motion?

MS. BLOOM: He is a named plaintiff now.

MR. GOETTEL: Now he is, but when you made the motion, he wasn't a named plaintiff.

MS. BLOOM: That's correct, and these were incidents simply dealing with how he became a named plaintiff. That's all this is introduced for.

MR. GOETTEL: It seems to me the thrust of your lawsuit is that people are involved with fights and therefore transferred.

MS. BLOOM: I would like to have him testify to what caused him to want to become a member of this lawsuit. That's all that this is submitted for.

MR. GOETTEL: You have already testified that he believed he was being threatened with transfer and he didn't want to be transferred.

MS. BLOOM: Right.

MR. GOETTEL: Now it's obvious from that standpoint that if he believes transfers are being used punitively, he would have an interest in being a plaintiff in the lawsuit.

MS. BLOOM: That's the only thing I want to establish, that he did have an interest and that he became a member.

MR. GOETTEL: That's obvious. I don't think you need to belabor that. Whether or not, in fact, he was threatened with transfer and whether threats of transfer are a proper part of your case is something else again.

I still havereservations on that.

MS. BLOOM: I can understand that, but I would just like to conclude with maybe a couple of questions.

MR. GOETTEL: Go ahead.

Q What did you discuss with Mr. Kolb in your interview with him?

MS. SILVERMAN: Objection.

MR. GOETTEL: Mr. Kolb is the attorney?

MS. BLOOM: He is a law graduate and my understanding is that this is privileged communication that the client can waive.

MR. GOETTEL: Yes, he can, but I don't see how it can have any relevancy.

MS. SILVERMAN: It's self-serving it seems to me. I just feel it's objectionable.

MS. BLOOM: I just don't understand why he can't testify to what he said to an attorney.

MS. SILVERMAN: It's self-serving. It's what he said.

MR. GOETTEL: I don't understand what it's got to do with the case.

THE WITNESS: You would, Your Honor, if you was a patient.

MR. GOETTEL: He had a conversation with the attorney. Whatever he told the attorney, if it's admissible, he can tell us directly right now.

MS. BLOOM: That's what I'd like him to do. That's my question.

MR. GOETTEL: All right. Since I don't know what this concerns, I don't know whether it's relevant yet or not. But rather than belabor this any further, let's hear it and I will rule on it after I have heard it.

What have you to say?

THE WITNESS: I told Mr. Kolb the events of that morning. I told him that it was my feeling that my transfer was imminent because I had never spoke to this doctor before. I told him that the patients on the ward felt the same way.

I asked him to have me named as a plaintiff.

MS. SILVERMAN: I move to strike that part.

THE WITNESS: So that we could have this done in the court rather than through the means that they had suggested which was violence because they were sick and tired of seeing patients transferred out because they had petitioned the courts or because they had complained about conditions.

MS. SILVERMAN: I move to strike that.

THE WITNESS: That's what I told Mr. Kolb and he subsequently had me named as a plaintiff in this suit.

MR. GOETTEL: It seems to me what he has just done is make the very arguments that you are liable to make at the conclusion of this case.

In other words, what he told Mr. Kolb is the conclusion he draws and the inferences he draws from the acts that occurred before.

I don't see it as being evidenciary by itself.

MS. BLOOM: Well, he is testifying to what he saw going on in a ward when he went back there, actions of other individuals that he observed.

MR. GOETTEL: What he actually testified to was what he told them. It was the witness who told the other people in the ward that there was a threat of punitive transfer and that he personally was being threatened.

He also testified that this seemed to worry and upset certain of the other patients.

THE WITNESS: Your Honor, I didn't say I had been threatened to the other patients. I merely said that Doctor Masachuski had come over and what he had said to me.

They have had this happen to them. They have seen it happen to other patients. I didn't say I was threatened with transfer, but because of the events of that morning --

MS. BLOOM: I would just state that it appears to me this is relevant.

MR. GOETTEL: I can rule on the relevancy. I have obviously heard it. Maybe when the cases is concluded, you can demonstrate to me what relevancy it has. At the moment, I don't think it's relevant.

MS. BLOOM: That's all.

MR. GOETTEL: Cross examination?

MS. SILVERMAN: I have no cross-examination.

MR. GOETTEL: What is the extent of your education, Mr. Dunleavy?

THE WITNESS: I'm a high school graduate.

MR. GOETTEL: Have you had any education beyond that other than self-learning?

THE WITNESS: No, Judge. Most of it is self-learning. I never attended formal school.

MR. GOETTEL: You testified earlier that in your evaluations, the doctors would ask you whether you felt ready to return to prison.

Did you ever tell them that you did feel ready to return to prison?

THE WITNESS: No, sir.

MR. GOETTEL: You also testified in addition to being at a time the law clerk who helped the patients with their petitions that you also carried complaints from some of the patients to the administration.

When you went to the administration, to whom did you speak?

THE WITNESS: Doctor Sweeney.

MR. GOETTEL: Anyone else?

THE WITNESS: Doctor Dalsham (phonetic) who is the deputy superintendent at the time. Mr. Ternullo I spoke to once.

I communicated with him many times through mail. Mr. Ronald Montalto. I think he was education supervisor. He was more or less our boss and Mr. Metz who was the security supervisor.

Mostly through the mail. Doctor Sweeney was the most responsive and would come most often in person to attempt to solve the problem, whatever it was.

MR. GOETTEL: Were you ever interviewed by a number of doctors at one time?

THE WITNESS: No. I never saw more than one at a time except when -- before I came here, I saw two doctors.

MR. GOETTEL: I am speaking only now of while you were at Matteawan.

Are you stil the law clerk?

THE WITNESS: No, sir.

MR. GOETTEL: Was there any punitive action taken with respect to the charges that you attempted to escape?

THE WITNESS: I lost my job.

MS. SILVERMAN: Objection to that question.

THE WITNESS: Not only that, Judge. I lost permission to see my psychiatrist. He was barred from coming to the institution. I had mail privileges terminated.

MR. GOETTEL: On the occasion that you were accused of escaping, where were you taken back into custody?

THE WITNESS: I'm afraid that I would have to refuse to answer that on the grounds that it might incriminate me. There is an action pending.

MR. GOETTEL: I wouldn't have asked the question had I known there was anything pending.

I have no further questions.

(Whereupon, the witness was excused and withdrew.)

MR. GOETTEL: Call your next witness.

MS. BLOOM: Martin Ogulnick.

MARTIN OGULNICK, after having been duly sworn, assumed his seat as a witness, was examined and testified as follows:

MR. GOETTEL: State your name.

THE WITNESS: Martin Ogulnick.

DIRECT EXAMINATION

BY MS. BLOOM:

Q Mr. Ogulnick, where did you receive your undergraduate education?

A University of Buffalo.

Q What degree did you receive from that school?

A B.A.

Q In what specific field?

A English and math.

Q Describe what your education has been.

A I have a masters degree in psychology from the New School for Social Research. I have all my PhD. requirements for a doctorate in clinical psychology from the University of Maine. I have not completed my dissertation.

Q Are you currently employed at Matteawan State Hospital?

A Yes.

Q What is your job title?

A Psychologist Two.

Q What would your job description be?

A Generally to do psychotherapy and psychodiagnostic testing, group therapy, consultation with other staff members and training.

That's the job description. That's not what I'm doing right now.

Q What are you doing right now?

A Individual psychotherapy.

Q How long have you been employed at Matteawan State Hospital?

A Two and a half years.

Q Where did you work before that time?

A One year at King County Hospital.

Q What were your duties there?

A Individual group psychotherapy and psychodiagnostic evaluations.

Q As a psychologist at Matteawan, what involvement do you have with the procedures used in evaluating patients at Matteawan to determine whether or not they should be returned to prison?

A Basically, I have some say into the evaluation process concerning those patients that I know which generally are those that are in psychotherapy, individual or group, or those that I know from other areas.

At my discretion, I can communicate with the psychiatrists prior to or during evaluation and give my opinion.

Q Have you personally observed any evaluations of patients?

A Over the years, several.

Q How often are patients normally evaluated by psychiatrists?

A It's really very hard to make a generalization. I have known of patients being evaluated three to four months. I have known them to be evaluated every two or three weeks for reasons that I don't know why.

Q How long did the evaluations last in time that you observed?

A There's a wide range. I have seen patients go in literally for two minutes and I have seen patients remain with the psychiatrist for twenty minutes. That usually is about the longest.

Q What were the nature of the records that were consulted by the psychiatrists in the evaluations that you observed?

A Generally, they're the current commitment papers. If available, an updated social history, psychological exam report, ward notes are available.

Sometimes they tend to be a little lean, but they're there.

MS. SILVERMAN: I move to strike that, "tend to be a little lean."

A Well, depending. There's no set procedure on what ward notes should be. It's variable. That's basically what they have available.

Q Based upon your conversations with psychiatrists and your work as a psychologist, what is your understanding of the criteria utilized in determining whether or not to send an individual back to prison?

MS. SILVERMAN: Objection.

MR. GOETTEL: Are we talking now specifically about Matteawan Hospital and the criteria used here in making the determination?

MS. BLOOM: That's correct.

MR. GOETTEL: What's the nature of the objection?

MS. SILVERMAN: What is his understanding? I don't see the probative value of that at all since he doesn't do the evaluation, since he can't read what goes on in somebody else's mind.

He testified as to what is available. I think that's the extent of the range of his competency.

MR. GOETTEL: That has nothing to do with the criteria used for making the decision.

MS. SILVERMAN: I don't know that he's an expert as to what criteria that the psychiatrists use at all.

MR. GOETTEL: I will conduct a brief voir dire for you.

Are there any published materials given to the staff members at Matteawan to be used in making transfer evaluation determinations?

THE WITNESS: As far as I know, there is no such thing existing.

EDITOR'S NOTE

Pages 134 were missing at time of filming. If, and when obtained, a corrected fiche will be forwarded to you.

MR. GOETTEL: Is there any formal training given to the staff in this particular type of decision?

MS. SILVERMAN: Excuse me. If he knows, Your Honor.

MR. GOETTEL: To your knowledge.

THE WITNESS: To my knowledge, no. But there's reason to believe I wouldn't know that.

MR. GOETTEL: There could be, but you wouldn't necessarily know it?

THE WITNESS: Yes, there might be verbal guidelines that are passed from, say, Doctor Sweeney to the staff that I'm not aware of.

MR. GOETTEL: Your only basis, since there are no published guidelines and to your knowledge, there are no oral guidelines that have been communicated to all of the staff members, then it would follow that the criteria used, at least to your knowledge, is individual to each evaluating doctor?

THE WITNESS: In practice, yes. I would say yes, although always in the background of Matteawan State Hospital, there's been an unwritten criteria --

MS. SILVERMAN: I move to strike this. This is unresponsive.

MR. GOETTEL: If it's unwritten, unless you can say who orally communicated it, I can't listen to it. If you believe it's just an implicit understanding, that's something you can't tell us about.

THE WITNESS: Well, it's been stated by a psychiatrist here and there --

MS. SILVERMAN: I'm going to object to that.

Q Which psychiatrists have you had conversations with regarding the criteria utilized in making evaluations?

A At one point, I had an extensive discussion with Doctor Shaeffer who is no longer with the staff as to what the criteria are because he was perplexed over the whole subject.

MS. SILVERMAN: I move to strike that as unresponsive, the latter statement.

MR. GOETTEL: The latter part will be stricken.

Q Would you describe the conversation that you had with Doctor Shaeffer?

MS. SILVERMAN: I object to that.

MR. GOETTEL: What was Doctor Shaeffer's position when he was here?

THE WITNESS: He was the staff psychiatrist who did most of the admission work on Ward 8. He would write the initial evaluation.

MR. GOETTEL: Did he do any of the transfer evaluation work?

THE WITNESS: Yes.

MR. GOETTEL: I guess it has some probative value. I will allow you to tell us what Doctor Shaeffer told you he understood to be transfer criteria.

MS. SILVERMAN: I would just like an objection for the record then. I had made an earlier objection, and I wasn't sure someone reading the record had understood that I had a continuing objection.

MR. GOETTEL: Obviously Doctor Shaeffer's understanding and criteria are not necessarily binding on the rest of the hospital.

But it at least indicates what one

doctor thought the criteria were.

THE WITNESS: More than his stating what the criterion was, he was perplexed as to what he thought the --

MS. SILVERMAN: Objection to that. That really is a conclusion.

MR. GOETTEL: Did he know what the criterion was?

THE WITNESS: No, he did not.

Q Did he have any understanding what the criteria might be?

A He had an understanding as to what he thought was the prevalent criteria.

Q What was that?

A Namely, was the man psychotic or not psychotic. It was his impression and again it wasn't --

MS. SILVERMAN: I object to his impressions, especially if Doctor Shaeffer --

MR. GOETTEL: I suspect it's not going to be admissible but let's get it out.

A It was his understanding that to be admitted to Matteawan, a man had to be psychotic. For that reason, all admissions into Matteawan were given psychotic diagnoses and he felt very uncomfortable with that, saying, well, there's a lot of men coming in who are not psychotic and he's not going to pin a psychotic diagnosis on them.

So he was admitting men --

MS. SILVERMAN: I don't see the relevancy.

MR. GOETTEL: I don't think the admissions are part of the suit. It's the transfers we are concerned with, although I can see if the admission standard is psychotic and if he lets people in that he didn't believe were psychotic, then as soon as someone determines that the person is not psychotic, it may logically follow thathe doesn't belong there any more.

THE WITNESS: That is a very big problem.

MR. GOETTEL: Are there any written admission standards?

THE WITNESS: No, not that I am aware of. There have been times when I have been very curious about that problem.

MR. GOETTEL: There are certainly legal standards that have to be complied with before a person can be committed.

What, to your knowledge, do they require in terms of finding?

THE WITNESS: I think they refer to mental illness.

MS. SILVERMAN: I object because I don't think Mr. Ogulnick's opinion of what is required by the law is particularly --

MR. GOETTEL: I am not asking his opinion. In fact, I will ask you, Miss Silverman, since you should be familiar with it. What does the New York State -- is it Mental Hygiene or Penal Law that contains this?

MS. SILVERMAN: Section 408 covers it. It sets out in detail the type of hearing and on whose certification.

MR. GOETTEL: What is the degree of mental illness one must have?

MS. SILVERMAN: I think it says mental illness. Is that right, Miss Bloom?

MR. GOETTEL: That is a very broad blanket.

MS. SILVERMAN: I did read the statute, but I didn't read it within the past few weeks.

MS. BLOOM: The statute reads that: "An individual is determined to be a mentally ill person in need of treatment."

MR. GOETTEL: I think unfortunately that gives a tremendous breadth of discretions for an indiviidual determination to the extent that I suppose if the funds and hospitals were available, a fairly substantial portion of our penal population could literally qualify.

But the witness is telling us that he understands that the actual criteria used by them is whether or not a person qualified as being psychotic.

MS. BLOOM: I don't know that that was the answer. Is that correct?

THE WITNESS: It's very difficult -- I guess up until now, the majority of admitting doctors will --

MS. SILVERMAN: I'm going to move to strike that.

THE WITNESS: Being that it's unwritten I guess there really is no answer to that.

MR. GOETTEL: We can ask it this way of

you. Do you play any part in the admissions procedure?

THE WITNESS: Right now, the psychologists are not. There was a time when we were, a year ago and prior to that.

MR. GOETTEL: At the time that you were involved in the admission procedure, did you do anything other than testing which was then subjected to a psychiatrist?

THE WITNESS: Yes, we would have a staff meeting.

MR. GOETTEL: You would give your oral impressions to the psychiatrist?

THE WITNESS: Right, the chief psychologists, some of the social workers who had contact with the patient, the psychologists and some of the officers from the admitting ward would convene at a staff meeting and several things were done; namely, a diagnosis was discussed and decided upon, the ward that the man was to go to was decided upon and a tentative treatment plan.

At that time, it was always incumbent upon the people who were attending those people to arrive at a diagnosis that signified a psychosis and that's why I say it was the prevalent attitude in the hospital that we needed to have a psychotic -- to admit the man, he needed to be psychotic.

I think for the most part, the hospital still runs under that assumption.

MR. GOETTEL: Now let's get back to transfers which is what we're really concerned with. Is it your understanding then that anybody who is found to be no longer psychotic in the hospital's present procedures would qualify for transfer out of the hospital?

THE WITNESS: You see, that is very difficult to answer because many of the men coming in are not psychotic to begin with.

MR. GOETTEL: I understand that. That, you have made clear. What, to your knowledge, is the transfer criteria, if you know? If you don't know, say so.

THE WITNESS: I don't know. I could give you what I would think the appropriate one would be, but I don't --

MR. GOETTEL: That, unfortunately, we

are not concerned about.

MS. BLOOM: I think we are concerned about it. But we are concerned about establishing what is occurring first.

MR. GOETTEL: Yes.

THE WITNESS: What's occurring, I can only give my impression. I don't know if you want to hear that.

MS. SILVERMAN: No, I object to any impressions.

MS. BLOOM: I believe that he can testify as a psychologist and as a member of the staff for two and a half years.

MR. GOETTEL: He can give an opinion as applied to any particular case, particularly if it's one of the named plaintisss.

MS. BLOOM: Let's move on to George Dunleavy.

Q Were you his psychologist in the spring of 1974?

A Yes, I was.

Q In March of 1974, is it your understanding that he was charged with escaping from this institution?

A That's correct.

Q What was your contact with Mr. Dunleavy prior to that charge?

A He was in individual therapy twice weekly for some four or five weeks prior to his being charged, which is not to say he kept every appointment. But I had seen him some five or six times in individual therapy.

Q As a psychologist, did you feel that he was in need of further treatment?

MS. SILVERMAN: At what point?

Q During this period of time.

MS. SILVERMAN: Prior to the spring?

Q Prior to March of 1974.

A Yes, well, we had barely begun, so obviously I felt that he was in need of further treatment.

Q Did you have contact with Mr. Dunleavy after the alleged escape?

A Yes, I did.

Q What was the nature of your contact with him?

A He continued twice weekly psychotherapy for a very brief period of time, I guess until his transfer.

Q Were you asked by anyone to prepare an evaluation?

MR. GOETTEL: He spoke of transfer.

I thought we established when Mr. Dunleavy was here that, in fact, he was not transferred.

MS. BLOOM: He was transferred in the spring of 1974 to Greenhaven.

MR. GOETTEL: It's recently that he hasn't been transferred.

MS. BLOOM: He came back. He stayed there for two or three weeks and came back.

MR. GOETTEL: I thought that occurred after he came back, the escape.

MS. BLOOM: The alleged escape occurred in March of 1975, this year.

MR. GOETTEL: After which, he was sent to Greenhaven, after which he was sent back and yet despite that fact, the escape charges are apparently still pending.

MS. BLOOM: They are still pending in State court.

A Between his return from the alleged escape and his having been on Ward 3, he couldn't come up for therapy at that time when he was in Ward 3. That was the institution policy at that time.

So after he was returned to a regular ward, he continued individual therapy maybe for two or three sessions at the most because he was then transferred.

Q Were you asked at any point to prepare an evaluation of George Dunleavy's mental condition?

A Yes, I was.

Q Who asked you to prepare that evaluation?

A John Wong (phonetic) who is the program coordinator of Matteawan.

Q Would you describe the situation surrounding this request by Doctor Wong?

MS. SILVERMAN: Objection.

MR. GOETTEL: When did it occur? When did this evaluation occur?

THE WITNESS: I would say about a week prior to his being sent to Greenhaven.

MR. GOETTEL: That was about a year ago?

THE WITNESS: Last April.

Q March of 1975?

A I think it was April.

MR. GOETTEL: You are asking for the circumstances surrounding it? What do you mean by that?

Q What did Doctor Juan state to you?

MS. SILVERMAN: Objection.

MR. GOETTEL: Well, what were you asked to do by the authorities of the hospital?

THE WITNESS: To prepare his --

MS. SILVERMAN: I didn't hear any testimony that the authorities asked him to do anything.

MR. GOETTEL: I thought he testified that Doctor Wong was the program supervisor.

MS. SILVERMAN: I don't know that he is a doctor.

MR. GOETTEL: What was your assignment with respect to Mr. Dunleavy?

THE WITNESS: I was asked to do a so-called special evaluation being that I was his therapist.

Q Did Doctor Wong state anything else to you regarding what kind of evaluation you were being asked to do?

MS. SILVERMAN: I'm going to object to that question.

MR. GOETTEL: On what grounds?

MS. SILVERMAN: I think it's hearsay.

MR. GOETTEL: I don't see too much the hearsay aspect of it. It's definitely a verbal act. I will allow it.

A No. He simply said he would like a special evaluation. I think since I was coordinating the therapy program, he indicated to me that he would like a number of special evaluations to be done for a number of patients by each patient's individual therapist, and he gave me a list of names.

He asked me who the therapist was and he said, "Would you please have these psychologists prepare special evaluations for these inmates."

Q Was there anything similar about the inmates that were listed?

A Yes.

MS. SILVERMAN: Objection.

A They tended to be somewhat well known throughout the institution in --

MS. SILVERMAN: I move to strike that.

MR. GOETTEL: I don't know that it has much weight.

MS. SILVERMAN: I don't even know what it means.

MR. GOETTEL: By "well known," do you mean that they had been around a long time or that they were active in some sort of activities or what do you mean by "well known"?

THE WITNESS: Let's say that as a

group, they were verbal, maybe somewhat brighter than the average inmate, all of whom had a tendency to be a little bit resistive in certain occasions.

MS. SILVERMAN: I really think that -- I move to strike that. I just think it's getting too "iffy."

MS. BLOOM: I can ask a more specific question.

MR. GOETTEL: Please try and make it a little more definite.

Q Had any of these individuals been involved in the alleged escape that Mr. Dunleavy had allegedly been involved in?

MS. SILVERMAN: Objection.

MR. GOETTEL: I will allow that.

A I can't say that I remember precisely. It was that type of inmate, however, that was on the list.

MS. SILVERMAN: I move to strike that.

Q What kind of evaluation did you prepare?

A You want to know what the evaluation was?

Q That's right.

MS. SILVERMAN: On Dunleavy.

Q That's correct.

A I stated that basically since he had allegedly returned, if anything he was in worse shape than before he had left. He was obviously despondent, depressed.

He was anxious. He was very concerned about what effects other alleged involvement might have on them because of the alleged help and just from his chain of associations which as therapists we pay attention to.

He seemed to be possibly self-destructive. He was talking very bleakly about a lot of things. Also referring to past self-destructive acts and it was my conclusion that he was potentially self-destructive.

His speech rambled a little bit. He would go from one subject to the other without really sticking to the point and it was obvious to me that if he belonged in Matteawan in the first place, he certainly belonged there at that particular point in time and certainly needed therapy.

So I recommended that he remain at Matteawan for those reasons.

Q Was Mr. Dunleavy, in fact, transferred to prison a week after you made this evaluation?

A Yes, some sort period of time thereafter.

Q Did you have any conversations with any of the other doctors regarding why he had been transferred?

A No, not as far as I remember.

Q Did you have any discussions with anyone who might have been able to give you some understanding as to why he was transferred?

A I discussed it. A lot of people were discussing it. I don't remember discussing it with anybody from whom I really thought I would get an answer.

In other words, it was discussed by, say, the other psychologists, some of the other social workers, but I did not go to somebody who might have more specific knowledge than myself and ask, "Well, how come he was transferred?"

Q Did you have any knowledge other than yours as to why he was transferred?

MS. SILVERMAN: I'm going to object to that.

MR. GOETTEL: Repeat the question please.

(Whereupon, the last question was repeated by the reporter.)

MR. GOETTEL: Reword the question. Do you know why he was transferred?

THE WITNESS: I can't know. I can't be positive. I can only draw conclusions, inferences.

Q Did you see Mr. Dunleavy after he returned to Matteawan?

A Yes.

Q Would you describe what his mental state of mind was at that time?

A It was basically the same as before he left except he was somewhat more agitated, more anxious. He looked slightly confused, I would say, but not in any psychotic way. Just more of the same, especially in terms of his anxiety.

Q Are you currently treating George Mitchell in therapy?

A Yes, I am.

MR. GOETTEL: Is he one of your new plaintiffs added on?

MS. BLOOM: Yes, he is. He will be testifying after.

Q How long has he been receiving therapy?

A Pretty much since last spring. I would say probably the end of March '75.

Q In October, were you informed that there were plans being made to transfer George Mitchell back to prison?

A Yes, I was.

Q Did you have any understanding or did anyone indicate to you why he was to be transferred?

MS. SILVERMAN: Objection.

MR. GOETTEL: Let's take it one step at a time. Did any of the doctors tell you why he was being transferred or discuss with you his transfer?

THE WITNESS: No.

Q Were your opinions requested by anyone regarding whether or not he should be transferred back to prison?

A No.

MS. SILVERMAN: Was this in February?

MS. BLOOM: This was in October 1975.

Q In your opinion as a psychologist --

MS. SILVERMAN: I'm going to object to this because it hasn't been established, at least as far as I recall, that he was, in fact, treating Mr. Mitchell in October of '75.

He testified he was treating him --

MR. GOETTEL: He testified he started last spring and we took it that it was implied he has treated him continuously since then. Is that correct?

THE WITNESS: That's correct.

Q How often did you see Mr. Mitchell between the spring of '75 and the present time?

A I would say on an average of once -- one and a half times a week. Thirty, thirty-five times.

MR. GOETTEL: One point I think you did miss there, Miss Silverman, was that the witness says he wasn't consulted about the proposed transfer.

However, I would assume that in the course of his treatment, he made at least some notes and comments on the patient's treatment which I would assume would have been available to the psychiatrists making the transfer determination.

Am I correct in that?

THE WITNESS: At that time -- well, it's always been a problem as to what kind of notes you can keep when you're doing psychotherapy in a prison anyway.

We tend to keep them as short and as skimpy as possible for reasons of confidentiality. What we write regarding what happens in therapy is by no means confidential and patients as well as officers as well as social workers all the way through do have access to the records.

They get back to patients, so we tend to record the fact that a session occurred.

MR. GOETTEL: Do you make progress notes?

THE WITNESS: We do, not regularly, but at significant times.

MR. GOETTEL: Would those progress notes of yours on Mitchell have been available to the staff doctors?

THE WITNESS: Not routinely. They would have had to ask for them. They would have been in my possession.

MR. GOETTEL: Did anyone ask for them?

THE WITNESS: No.

MR. GOETTEL: Did you ever, prior to the time that his transfer was taken up, have any discussions with any of the psychiatrists who might have been responsible for the treatment of Mr. Mitchell?

THE WITNESS: No. Unfortunately, the

evaluation process, the therapy process are distinct. There is very little communication.

MS. SILVERMAN: I move to strike the latter part.

MR. GOETTEL: It's immaterial to this case, but the essence of it is that although the witness was in at least close contact with the prisoner as anyone else in the staff of a trained nature, his evaluations were not requested prior to making a transfer decision.

MS. SILVERMAN: As far as he knows.

MR. GOETTEL: From what he says, there's no way that they could have done it without him knowing it.

Q In your opinion, in October of 1975, was Mr. Mitchell's mental condition such that you would have recommended that he be returned to prison?

A Well, I wouldn't have recommended a return to prison, but that would depend on my own implicit criterion as to who goes to prison and who doesn't.

If I could guess what, say, a particular psychiatrist's criterion was, then maybe he should have. So I can't say.

Q In your opinion.

A My opinion, he should --

MS. SILVERMAN: Objection. He just testified that that would depend on the set of criteria that would be applied. It seems to me you would have to give him some criteria.

THE WITNESS: I have my own.

MR. GOETTEL: I don't think to ask for his opinion is correct unless you bring out what his criteria are because he's already indicated that his criteria are not necessarily those of the psychiatrists on the staff here and he's also testified that there are no published criteria.

So before you ask his opinion, you better get his criteria.

Q What are your criteria that you would use to determine whether or not an individual should be transferred from Matteawan to prison?

MS. SILVERMAN: Objection, Your Honor.

MR. GOETTEL: On what grounds?

MS. SILVERMAN: He doesn't really make the determination, so the probative value of his testimony --

MR. GOETTEL: He's being asked for an expert opinion, and I sustained your objection to his expert opinion because we didn't have a basis upon which to evaluate his opinion.

He's now giving us his standards from which he will then give an opinion.

MS. SILVERMAN: I would say what difference does that make what his standards are to anything?

MR. GOETTEL: I think he holds graduate training and is on the verge of receiving a PhD. and has had practical experience working at it. While he may not be as prestigious an expert as an M.D. with his boards in psychiatry, his opinions are certainly qualified as expert as contrasted to the ordinary person.

In other words, I think he qualifies as an expert in his field albeit he doesn't have an M.D. or as yet a PhD.

MS. BLOOM: In addition to that, it's been established that from time to time, his opinions are requested by the psychiatrists.

MR. GOETTEL: Yes. Off the record.

(Whereupon, an off the record discussion took place.)

MS. SILVERMAN: My objection stands.

MR. GOETTEL: Continue. What would your standards, if you were allowed to control the standards for transfer, be?

THE WITNESS: I would say that a man showing some emotional neurotic difficulties, whether psychotic or not that is amenable to some sort of treatment and that is available at the hospital should be given the opportunity to take advantage of that treatment for as long as is necessary or until it becomes obvious we can't do anything else for him.

That would be the broad criterion. I think in the case of an inmate like George Mitchell, he had severe neurotic problems, although not psychotic at the time, dealing with -- I don't think it matters, but in my opinion, he did have severe problems and he was coming to therapy, and I thought that we could eventually make some progress.

Therefore, I would not have sent him out of Matteawan.

Q Did you see George Mitchell when he returned from prison?

A Yes, I did.

Q About what period of time would that have been?

A I really don't remember. Are you talking about the month?

Q Right.

A Possibly late October, early November. I'm not sure.

Q What was his condition when you saw him after he returned to Matteawan as compared with what his condition was just prior to him leaving Matteawan?

MS. SILVERMAN: I object to that. I take it by condition, does that mean diagnosis?

MS. BLOOM: His mental condition.

MS. SILVERMAN: Maybe we could just have some --

MR. GOETTEL: Let's make it mental state. How would you contrast his mental state on those two occasions?

A He came back feeling rather insecure, more frightened -- let me put it this way. Before his release, whatever anxiety or insecurity he was feeling was well covered, well defended against and he was functioning rather well in terms of his overt activities.

When he came back, he was decidedly anxious, appeared to have a streak of insecurity that was quite different than the usual thing you would see from Mitchell.

MR. GOETTEL: How long was he gone?

THE WITNESS: Well, I would say maybe five or six weeks, although it's really a guess. He lost a lot of weight. His complexion was kind of ashen.

He looked visibly shaken, although in terms of real symptomotology, you couldn't say that they were really new, full-blown symptoms.

Q Would you describe the kind of therapy program that you are currently involved in at Matteawan?

A We, for the most part, are doing individual and group psychotherapy. Any patient in the hospital who desires one or the other, for the most part, we have been able to accomodate.

If the patient is suitable for that kind of treatment and is motivated, he can receive it.

Q To the best of your knowledge and understanding, is this kind of treatment available in prison?

MS. SILVERMAN: I'm going to object to that.

MR. GOETTEL: I will allow him to answer if he knows. Do you know?

A Well, I know people who work at other institutions who have described the other institutions to me, but I have never been to another institution.

MR. GOETTEL: I don't think he is sufficiently qualified in that regard.

Q Have you spoken to inmates who have been transferred to prison who have returned to Matteawan?

A Yes.

Q Such as George Mitchell?

A Yes.

Q Based upon your conversations with them, were they able to participate in therapy programs similar to those that --

MS. SILVERMAN: Objection.

MR. GOETTEL: I don't think that's proper either. As a matter of fact, two witnesses themselves have already testified to the extent that they didn't get much in the way of psychiatric treatment when they were in prison. I think you have established that point.

I don't know that it's a matter of serious contest here, although I may be wrong. Maybe the State is going to prove that they have a lot of psychiatrists assigned to the prisons.

This witness isn't sufficiently competent in that area to testify.

Q Based upon your conversations with other psychiatrists, is it your understanding that if a patient wants to leave Matteawan, that patient can leave?

MS. SILVERMAN: I'm going to object to that. I don't know where this is leading.

MR. GOETTEL: I don't understand the question.

Q Getting back to one of the criteria utilized in transferring patients from Matteawan back to prison, my question is --

MR. GOETTEL: What you're asking then is does he believe the patient's wishes are a part of the criteria for transfer?

MS. BLOOM: That's correct.

MR. GOETTEL: Do you know the answer

to that?

THE WITNESS: It would seem that in many cases what the patient desires he does get. I would say they are listened to in that regard, their personal desires.

MS. BLOOM: I have no further questions.

CROSS EXAMINATION

BY MS. SILVERMAN:

Q I show you a copy of a special psychological progress report and ask you if you can identify that.

(Handing document to witness)

A Yes, that's the one I wrote concerning George Dunleavy.

MR. GOETTEL: This is our first exhibit. This will be State's Exhibit A.

MS. BLOOM: I have no objection to this.

(Whereupon, the abovementioned document was so marked as State's Exhibit A in evidence.)

Q I showed you this earlier in the day. Did you get a chance to read it?

A Yes.

Q You stated earlier, Mr. Ogulnick, that in your opinion the criteria for deciding whether to transfer somebody from Matteawan back to a correctional setting would be whether there was any kind of a program that Matteawan could offer them if they suffered from some sort of emotional or even neurotic problem.

Is that correct?

A That's correct.

Q In reading this State's Exhibit A, you state here that you recommend that Mr. Dunleavy be given the time to work out certain emotional problems at Matteawan.

So I take it then that you believed that he had certain emotional or, i.e., neurotic problems that could be helped if he remained at Matteawan?

A That's correct.

Q And that this was the basis for your earlier testimony that, in your opinion, it would have been better for him to stay at Matteawan, isn't that correct?

A Right.

Q You have access, do you not, to the progress sheets?

A Access to them, yes.

Q With respect to Mr. Dunleavy, did you have occasion during your treatment of him to refer, from time to time, to his progress sheets?

A I have no specific memory of having done it. Although I don't remember not having either.

Q But you did state earlier, in your opinion, that it was your opinion, in any event, that Mr. Dunleavy you believed had a tendency to be self-destructive or could be self-destructive?

Was that your testimony recently here in court?

A Yes.

Q Were you aware that on December 19th, 1974, Doctor Grough (phonetic) had written in his progress report that, "He appears to be simulative and may act out psychotic behavior when it suits his purposes to stay hospitalized"?

Were you aware of that?

A No, I was not.

Q Were you aware that in February of 1975, Doctor Sirman wrote --

MS. BLOOM: I object to that.

MR. GOETTEL: You are objecting because these reports are not in evidence?

MS. BLOOM: That's correct, and I'm objecting to the fact that they are being read into evidence. These doctors can testify and the reports can be introduced if that's what you want to do.

MS. SILVERMAN: I am not introducing them at the current time. I am merely asking if he was aware of these particular things.

MR. GOETTEL: In the course of doing it, you are getting the doctors' opinions in the question.

MS. SILVERMAN: I intend to put the doctors' opinion in directly.

MR. GOETTEL: I will allow it subject to connection.

Q Were you aware in February that Doctor Sirman had put on the progress sheet that, "Mr. Dunleavy may be ready for prison"?

A Was I aware of it?

Q Yes.

A No.

MS. BLOOM: I object to this line of questioning simply because statements are being taken from these progress sheets out of context, and I have never seen the sheets.

It seems to me that it's impossible for me to cross-examine the rest of the sheet.

MR. GOETTEL: The witness himself says he's not aware of it, so you don't need to cross-examine him about it. When the reports are put into evidence or the witness is testifying, you will then have the opportunity to consult the entire report for purposes of cross-examination.

MS. BLOOM: I would prefer if the questions are --

MS. SILVERMAN: I have no more questions along that line in any event. I am going on to a different direction now.

Q You stated, I believe, that you had some role with respect to the admission of patients and formulating a program and diagnosis for them.

A We did. That procedure was ended about one year ago. There's a different procedure now.

Q Are you personally involved now in admission procedures?

A No.

MS. SILVERMAN: I have no further questions.

MR. GOETTEL: Miss Bloom, is it your intention of calling any outside experts?

MS. BLOOM: Not today.

MR. GOETTEL: You are not certain whether you are going to call them later either?

MS. BLOOM: I am not sure at this point.

MR. GOETTEL: I am going to take advantage of the fact that we have someone who is expert and ask him a few questions against the possibility that you will not present an expert along these lines.

Obviously the State has nothing to gain by putting an expert on the stand for these points.

Mr. Ogulnick, one of the positions taken in this lawsuit by the plaintiffs which somewhat mirrors your earlier criteria is that they have a statutory right under New York law to remain in the Matteawan Hospital until they have "recovered."

Is that the word you have taken from the statute?

MS. BLOOM: That's the wording of the statute.

MR. GOETTEL: I believe you testified

that, in your opinion, if you could set the criteria, you would not release any patient, even a neurotic one, if he could profit by further treatment here at Matteawan Hospital.

THE WITNESS: Yes, but by the same token, there can be psychotic patients who do not seem to be able to benefit from Matteawan who I would recommend go back to prison despite their psychotic state.

MR. GOETTEL: Your criteria is not based upon the state of recovery, but upon whether or not the hospital can do anything for the patient?

THE WITNESS: Right.

MR. GOETTEL: You might deem someone who wasn't terribly sick should stay at Matteawan because they could get better and recommend sending someone back because he wasn't profiting by his hospital confinement?

THE WITNESS: That's correct.

MR. GOETTEL: Is Matteawan the only hospital for state prisoners in this state?

THE WITNESS: It's the only facility

that's called a hospital. However, there have been treatment facilities in existence that have done essentially the same thing as Matteawan; namely, the Actec Unit.

MR. GOETTEL: Is that presently in operation?

THE WITNESS: Parts of it. That was disbanded as a unitary place and there are sections of it all over.

MR. GOETTEL: Practically speaking, then Matteawan is the only real facility for treating state prisoners who have mental and emotional problems?

THE WITNESS: Yes.

MR. GOETTEL: How many patients can Matteawan Hospital --

MS. SILVERMAN: I object to that. I don't think the statute says anything about emotional problems. It says mental illness.

MR. GOETTEL: Although I am not so certain that there is that hard and fast a dividing line.

MS. SILVERMAN: I think a psychiatrist

might disagree.

MR. GOETTEL: How many patients can the Matteawan Hospital accomodate, just roughly?

THE WITNESS: There are approximately 330 there now and we can handle probably 500.

MR. GOETTEL: That would be tops?

THE WITNESS: Yes.

MR. GOETTEL: Do you have any idea how many prisoners we have in the entire New York State penal system?

THE WITNESS: I think we have 17,000.

MR. GOETTEL: Would you agree that as a group, considering their reasons for being incarcerated the acts which led to it, that there is a higher incidence of mental problems among the prisoners in the state systems than in the public as a whole?

THE WITNESS: I think there is no question about it.

MR. GOETTEL: Would youalso agree that the confinement of a person, particularly a young male, regardless of his original mental state, is likely to result in obstreperous behavior?

THE WITNESS: Yes.

MS. SILVERMAN: I have to object to some of these questions, Your Honor. I feel that we are getting beyond Mr. Ogulnick's expertise.

MR. GOETTEL: Perhaps, but if you follow the whole line of questioning, you may find it's on your side, not on the other.

MS. SILVERMAN: I do have my own experts, Your Honor. So I take the chance.

MR. GOETTEL: This expert was presented by the plaintiffs. I would gather then that even for the run of the mill prisoner in an ordinary prison, the control of discipline is a difficult problem?

THE WITNESS: Yes, it is.

MR. GOETTEL: I would think that the control of discipline of persons who are both prisoners and mental patients becomes even more difficult?

THE WITNESS: I'm having some second thoughts about my response to your last question. As far as discipline is concerned, I have always felt that it's the institution itself really cannot maintain discipline without almost a hundred percent cooperation from the inmates.

MR. GOETTEL: Are you likely to get a hundred percent cooperation from inmates?

THE WITNESS: No, but most of the reason that the place doesn't become riotous day after day is simply that most of the inmates on their own volition choose to do what they should do.

MR. GOETTEL: But even in the best run of prisoners, you are going to have a certain number of prisoners who are going to cause problems, are you not?

THE WITNESS: That's correct.

MR. GOETTEL: When you compound the natural reluctance of a person to be in prison with mental problems, you have an even more difficult problem in maintaining discipline and safety, do you not?

THE WITNESS: Yes, absolutely.

MR. GOETTEL: What steps then can a prison hospital take when it has patients who act in an unruly and dangerous manner which threatens not only their own health and safety but the health and safety of other prisoners and officials?

THE WITNESS: I'm not sure what specific steps a hospital can take except to try to provide respectful humane treatment as much as is possible.

A lot of the problems do result from inter-personal conflicts that can be avoided. The problems that emanate from a man simply being beserk are very few and far between.

We don't see that very often. Those men, of course, need to be physically constrained and you need the facilities to constrain them.

But it doesn't play a very big role in the hospital as a whole. The image of Matteawan is very much different from what actually exists.

Very rarely do we need to put a straight jacket on a man, put him in the restraining sheet. It does not need to be the dominating picture in running the hospital.

MR. GOETTEL: Returning to your criteria for release, I have the impression that if your criteria were applied, there would be substantially fewer releases than there probably at present are.

Do you believe that to be so?

THE WITNESS: No, simply because most of the men who do leave do not object to leaving and, in fact, a good majority are looking forward to the change so that you don't get very many men that you are really forcing out of the institution.

MR. GOETTEL: Would you suspect that of the large number of state prisoners, and you gave me the number earlier, and I have forgotten what it was, but it was in the tens of thousands, that there are probably not hundreds of prisoners who have severe mental illnesses qualifying as psychosis, but who are not here at Matteawan?

THE WITNESS: Yes, I would say there is no question about it.

MR. GOETTEL: Would not the retention of persons with lesser mental problems, even though they were profiting by the reduced capacity of the hospital to treat those with more serious problems?

THE WITNESS: It would ordinarily if the people at the prisons were about to send these men who need treatment to Matteawan.

But for the most part, if they adjust outwardly to the prison, they remain at the prison.

MR. GOETTEL: You don't then view the Matteawan as being overutilized at the present time by the outside systems sending people in, the prison system as a whole?

THE WITNESS From a certain point of view, it is. You get certain prisons that seem to send men who aren't psychotic where at the same time, I think the prison thinks that the criteria is that they be psychotic.

Well, they send them anyway, and I think that it is appropriate, but not in the terms that they are being sent, if that makes sense.

MR. GOETTEL: I am talking now in terms of total numbers. I gather from your testimony you believe that the prisons should be referring more prisoners for treatment at Matteawan and possibly different prisons than they are, in fact, sending them?

THE WITNESS: No, I don't mean to imply that simply because some of those psychotic men who are adjusting to prison might be gaining as much from that adjustment to prison as they would from coming to Matteawan.

MR. GOETTEL: That would vary, I would think, depending upon how long a sentence they were serving. If you have a long-term prisoner, his adjustment to prison is probably a good thing.

But if you have someone serving a short term, to become adjusted to prison may be counterproductive if he is about to be released in the near future.

THE WITNESS: That's correct. I would agree if that particular patient, in coming to Matteawan, would be motivated and able to use the programs that we have.

If not, then he just may as well stay

adjusted to prison and remain there.

MR. GOETTEL: Returning to the question of punitive measures, the essence of the plaintiffs' complaint -- it has several aspects, but at least one of the ones is that they tend to have been transferred out of Matteawan punitively, I think, in large part because of physical misbehavior.

In most instances, I believe there were altercations that involved guards and other officers. I think you acknowledged earlier that the maintenance of discipline is an important function of any correction system.

You also indicated that you didn't think there was as much difficulty in that regard as might otherwise be expected.

But for the moment, let's take the fact that I think there must be a certain number of what you would call troublemakers, persons who are going to be continually getting involved in fights and altercations because of their own personal psychic makeup.

THE WITNESS: Right.

MR. GOETTEL: Assuming for the moment that you have had them in treatment for a year or two without making any real progress in correcting their mental problems.

What would you advocate doing with them at that juncture when they start getting involved in serious scrapes and fights here at the hospital?

MS. SILVERMAN: I'm going to object to that question.

MR. GOETTEL: It's put as an expert opinion. I'm not going to necessarily be bound by it.

THE WITNESS: Whatever I chose to do, I would do it above board; namely, if the man is uncontrollable in an open setting such as Matteawan and he doesn't seem to be benefitting from therapy, I would simply tell him, "You are leaving Matteawan because we cannot physically contain you in this open setting. You don't seem to be benefitting from therapy and you are going to be shipped."

MR. GOETTEL: You, essentially, then are perhaps arriving at the same result as the authorities are accused of arriving at right now, albeit for different reasons?

You arrive at that result because you take it that people who continue to be problems are not benefitting from their treatment and therefore, for that reason alone, there is no reason to keep them?

THE WITNESS: But I wouldn't necessarily say because they continue to be problems that they are not benefitting from treatment.

MR. GOETTEL: I'm saying that if the fact that a person was a continual behavior problem and a danger to others and was involved in a number of assaults, that would be at least one factor in concluding that he wasn't progressing and profitting from his hospitalization and if the other factors led also to the same conclusion, your solution would be to transfer him out even though he was not, by any stretch of imagination, recovered?

THE WITNESS: Yes, I think you would reach a point where you would have to weigh the security aspects of the matter against the treatment aspects and make some decision because we do have a loose physical setup at Matteawan.

They are not contained by individual cells and cell blocks. However, that would have to be a decision weighed very carefully and I don't think you would arrive at that very often at that conclusion.

Myself, I don't know of anyone at that hospital who has been so physically uncontrollable and assaultive that he needed to be shipped out of the hospital because of that.

MR. GOETTEL: Do you have any further questions?

MS. BLOOM: Yes.

RE-DIRECT EXAMINATION BY
MS. BLOOM:

Q Is it your understanding that it is currently the practice of Matteawan to transfer someone back to prison because they can no longer benefit from therapy and they continuously get into fights?

MS. SILVERMAN: I object to that question.

MS. BLOOM: I am simply repeating.

MS. SILVERMAN: That's the allegation. It seems to me you can't ask somebody his opinion on that. You would have to establish it by facts.

MS. BLOOM: I am simply asking the same question that you asked on the theoretical basis, in practice.

MR. GOETTEL: I understand. I think your problem is that he would have to support the opinion by some facts.

Q In the case of George Dunleavy, is it your opinion that he was transferred back to prison because he was not benefitting from therapy and because he had been involved in numerous fights?

MS. SILVERMAN: I'm going to object to that question.

MR. GOETTEL: I will allow it. I don't think the answer hurts you. What is your answer?

MS. SILVERMAN: Well, I mean, I think it seems to me there has been no basis, no foundation. I don't know what he even knows about the transfer back.

MR. GOETTEL: Once he's given his opinion, we will ask him the basis for it.

MS. BLOOM: The basis has already been testified to. He indicated that he had conversations with George Dunleavy before he was transferred and after he was transferred and that his opinions were solicited.

You introduced into evidence his statement.

MS. SILVERMAN: That's just his opinion. But he didn't do the transfer. The question is the people who did the transfer --

MR. GOETTEL: You better read the witness the question again.

(Whereupon, the last question was repeated by the reporter.)

A That's a double question that can't be answered singly.

MR. GOETTEL: He can't answer the question because you put two parts in it.

Q Is it your opinion that he was transferred back to prison because he could no longer benefit from therapy?

MS. SILVERMAN: Is that his particular

therapy program?

MS. BLOOM: His therapy program.

A I don't think that his potential to benefit or not benefit from therapy was the criterion that was used to send him back to prison.

MS. BLOOM: That's my only question.

MR. GOETTEL: If there are no further questions, we will excuse the witness.

(Whereupon, the witness was excused and withdrew and the hearing was adjourned at 4:00 p.m.)

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I, MAUREEN KRAMER, a Notary Public of the State of New York, do hereby certify that the foregoing transcript is true and accurate.

Maureen Kramer

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

HECTOR CRUZ, MATTHEW GULLY, CARMINE PERELLI, individually and on behalf of all persons similarly situated,

Plaintiffs,

- against -

BENJAMIN WARD, individually and in his capacity as Commissioner of the New York State Department of Correctional Services, VITO M. TERNULLO, individually and in his capacity as Director of Matteawan State Hospital, LAWRENCE SWEENEY, individually and in his capacity as Chief of Psychiatric Services of Matteawan State Hospital,

Defendants.

---X

Matteawan State Hospital
Fishkill, New York
January 27, 1976
10:30 a.m.

Before: GERARD L. GOETTEL, U. S. Magistrate

Appearances: JANE E. BLOOM, ESQSS.
Attorney for the Plaintiffs
Mid-Hudson Valey Legal Services Project
50 Market Street
Poughkeepsie, New York 12601

(cont'd)

Appearances (cont'd)

LOUIS J. LEFKOWITZ, ESQ.
Attorney for the Defendants
Two World Trade Center
New York State Department of Law
New York, New York

BY: ARLENE SILVERMAN, ESQSS.

Also present:
LAWRENCE SWEENEY

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MR. GOETTEL: If we are ready to begin, please call your first witness.

MS. SILVERMAN: Doctor Sweeney.

LAWRENCE SWEENEY, after having been duly sworn, assumed his seat as a witness and testified as follows:

DIRECT EXAMINATION BY MS. SILVERMAN:

Q What is your name?

A Lawrence Sweeney.

Q Could you state your position here, please?

A I am the chief of Psychiatric services at Matteawan.

Q How long have you been occupying that

position?

A Since April of '74.

Q Could you describe your functions as the chief of psychiatric services or what that position is?

A Well, it's essentially deputy director of the Matteawan State Hospital, but I'm also responsible for psychiatric services to the rest of the institution; namely, Fishkill Correctional, the elderly and handicapped. We have two Actec programs that were transferred down here from Dannamora and we, of course, have the D & E, diagnosis and evaluation.

Q Before we get into those different units and your functions vis-a-vis each of those units, could you tell the court your professional training and background?

A Yes. I graduated from Princeton in 1940, Cornell University Medical College '43. Intern, Kings County Hospital '43-'44, served as a doctor in the Navy September '44 to September '46 attached first to LST groups in the central Pacific and subsequently the Second Marine Division occupation in Japan and then finally the First Special Marine Brigade.

I returned and went immediately into residency training at the Bronx Veterans Hospital September '46. In '47 in neurology and psychiatry. In 1948, I spent a year in Saint Vincent's Hospital as assistant resident in neurosurgery.

1949, I returned to the Veterans Administration, but was on leave of absence to the New York Neurological Institute for four months and then in July of '49, I went out to the Northport Veterans Hospital to straighten out some neurological-neurosurgical programs there.

In February of '50, I opened Montrose Veterans Hospital and was the chief of the neurological service there and on the executive committee, and I left the Veterans Administration April 1952, entered into private practice in neurology and psychiatry in Poughkeepsie and continued in that capacity until 1968 when I became the part-time commissioner of mental health for Dutchess County and after two years as part-time, I became the full-time commissioner for the next three years.

During which period, I discontinued my private practice as required by law and was on the regional committee for planning, and I was also on the policy committee in an advisory capacity to Alan Miller, then commissioner of mental hygiene in Albany. We met once a month.

In 1973, October, I sought and obtained employment here and was in charge of several wards. When there was a reorganization here in April of '74, I took over the position of, well, deputy director or chief of psychiatry, whichever way you want to put it, of Matteawan.

Q Did you finish, Doctor Sweeney?

A I think so.

Q Let me just say this, Doctor Sweeney.

MS. SILVERMAN: I understand the other witness has arrived, and I suggest Doctor Sweeney has just finished his qualifications. Perhaps we should take the other witness before we lose him.

MR. GOETTEL: That's fine with me.

MS. SILVERMAN: Doctor Sweeney, you may step down.

(Whereupon, the witness was excused.)

MR. GOETTEL: Call your witness.

MS. BLOOM: LOUIS POVEROMO.

LOUIS POVEROMO, after having been duly sworn, assumed his seat as a witness, was examined and testified as follows:

DIRECT EXAMINATION BY MS. BLOOM:

Q What is your name?

A Louis Poveromo.

Q What is your age?

A Excuse me? I can't --

Q What is your age? How old are you?

A Thirty-two.

Q Where are you currently incarcerated?

A Matteawan State Hospital.

Q In 1974, were you convicted of a crime?

A Yes.

Q What was that crime?

A Robbery one.

Q What sentence did you receive?

A Ten to twenty.

Q When and where were you originally incarcerated?

A I was in Atlantic Avenue House of Detention.

Q Where were you sent from there?

A Greenhaven.

Q Do you remember what month and year that was?

A August 27th, I got there.

Q Of what year?

A '74.

Q How long did you stay at Greenhaven?

A About eleven days.

Q Where were you sent from there?

A Sing-Sing.

Q Where were you sent from Sing-Sing?

A To Matteawan.

Q Do you remember approximately what month and year you arrived at Matteawan?

A September -- I think it was September 17th, somewhere around there, 1974.

Q Were you placed in a ward or a cell at Matteawan?

A Where, over here? I was -- I went right to ward 8.

Q What was the physical setup of ward 8?

A Well, it's an open ward, you know, and everything. You got a T.V. You sit down and chairs and everything. Then upstairs they got the dormitories where you sleep and everything.

Q Did you receive any medication?

A Yes.

Q How often a day?

A Well, you get it -- usually you get it like four times a day.

Q Do you know what kind of medication you received?

A I think it was -- at first, I didn't know.

They were giving me, I think, sinequan (phonetic) at first, you know. But then I stopped taking it because I really didn't want to be here, you know, because I didn't feel there was anything wrong with me, you know, and everything, and I stopped taking it, so I seen the doctor over there, right, and so I stopped taking it for a few days.

But then I started getting a little, you know, messed up, you know, paranoid and everything like that, you know, because I says, you know, I didn't ask to come here or nothing like that.

You know, I had been in prisons before, you know, and I can't see why they're sending me, you know, to a mental institution and everything.

I told them I wanted to go back. So I stopped taking medication on my own, right. I mean, you know, like I was spinning out and everything.

Then I seen myself getting all messed up and everything, you know, paranoid and everything. So I explained it to the doctor. He says, well, you know, he says "that's why you're getting like that, because you ain't taking your medication." He says, "You'll feel much better."

I started taking it again, right, so I

started feeling like, you know, a little better once I started getting used to it.

Then I stood on 8 ward about three and a half weeks, four weeks. Then from there, they sent me to 9 ward.

Q How often did you see a medical doctor?

A When I first came here, the doctor used to come on 8 ward, you know, because it's a reception ward. Usually like, you know, they pass through, you know, they sign the book and, you know, you have to see the new guys and give them their physical and ask them all sorts of questions.

But on that other ward when I got to 9 ward, I didn't see the doctor until about seven weeks later, you know, six weeks later. Then after, then usually you go like every six weeks to evaluation.

Q Did you see a psychiatrist at that point?

A What, up in evaluation?

Q Yes.

A Yeah.

Q How often during this period of time, and we are now talking about the period of time when you first got to Matteawan, would you see a psychologist?

A No, when I first got here, no

Q When did you start seeing a psychologist?

A About January of '75 I started seeing one. They started, you know, you had to see a psychologist, so I put in for it.

Q How often would you see a psychologist?

A Well, we were --

Q How many times a week?

A It was once a week at first. I seen him once a week for an hour, right, up in Building 21, you know. That was it.

Q You indicated that you saw a psychiatrist for an evaluation about once every six weeks, is that correct?

A See a psychiatrist?

Q A psychiatrist.

A Well, it seems like every six weeks.

Q Every six weeks?

A Every six weeks we seen the psychiatrist for evaluation.

Q Were you evaluated by the same doctor each time?

A No.

Q In November of 1974, do you remember whether or not you saw a Doctor for an evaluation?

A Yeah, I seen -- November? Yeah, I seen -- I think it was -- I don't know if it was Doctor -- yeah, I seen a doctor in November. I can't --

Q Was that the first evaluation you received?

A Yeah, for evaluation, right.

Q When was the next time you were evaluated by a doctor?

A Then I think I seen one again in the beginning, right, of January. I think it was I seen another one.

Q This would be January 1975?

A Yeah, '75 I seen another doctor, right, and then that same month, right, there was a little confusion, right, on ward 9, you know, and I went to evaluation two days before this confusion happened.

Q So you went to evaluation in January of 1975?

A Yeah, I went to two of them, right.

Q On two occasions?

A Right.

Q How many days after this second evaluation that you had in January of 1975 did this confusion occur? How many days after?

A Two days after.

Q Will you describe what happened?

A It was -- well, this inmate's cell was on the bug. You know, he went out in the corridor. Like, on ward 9, you got a corridor and he started to kick in the butt cans they got so you can put your cigarettes in and the two officers, you know, restrained him, right.

So I went over to the officer. I said, "There's no need for that, the guy is a little depressed. He's got a lot of problems and everything like that."

They were ready to let him go and this other officer was coming through picking up one of his men from the mess hall. He seen this. He hit the inmate, punched him and all of a sudden, we started getting into a little scaffle.

You know, what are you hitting the guy for? The guy is depressed and everything. There was no need for it. The charge officers were going to let him go.

He started a big rumpus, right. Then the lieutenant came, and a few other things, right. So they put a couple of inmates on the jail ward. That next day, we went down to the school, you know, to explain and everything and write up a thing, you know, and I think Doctor Sweeney would remember that incident.

George wrote up a thing and the two

patients, right, they let out of the jail ward, right. They let one out the next day, right, and the other one they let out Friday, right, and that Friday, right --

MS. SILVERMAN: I don't see the relevance of this to the witness, Your Honor.

MR. GOETTEL: Where is all this going?

MS. BLOOM: It's going someplace hopefully very soon.

Q What was your involvement, your particular involvement in this incident?

A It wasn't really, you know -- I tried to avoid it because the guy, you know, was very depressed and everything. There was no need for these officers like to come in. It wasn't even his ward. He hit this guy for no reason.

Q Where were you placed after this disruption occurred?

MS. SILVERMAN: I move to strike that, Your Honor. I move to strike "He hit the guy for no reason." I don't know that anybody was hit.

MR. GOETTEL: It appears to be

totally irrelevant to this proceeding.

MS. BLOOM: It can be stricken.

Q Where were you placed after the disruption?

A Building 21, the transit unit two days later on a Friday, January 31st, they shipped me out.

Q Did you see a doctor prior to your transfer?

A I seen that doctor the same week. I seen Doctor Sherman, right.

Q Did you see a doctor after the fight occurred?

A No, I didn't see no doctor. I didn't see nobody.

Q Did you see anyone else? Did you have any other kind of a hearing before you were transferred out?

A No, no hearing, no nothing.

Q Did anyone inform you as to why you were transferred?

A No.

Q Where were you sent?

A I was sent to Clinton.

Q Youwere initially sent to the transfer unit?

A Yeah, ward P in building 21, transfer unit.

Q How long did you stay there?

A I stood there fifteen days.

Q Where were you sent after that?

A To Clinton.

Q Where were you placed in Clinton?

A Well, when I first got there, like, you know, I tried, you know, to stay there, right. They put me in the reception block, F block. I stood there that one day.

Then all of a sudden, like, you know, everything started like, you know, closing in on me and everything. Like, I didn't remember nothing. The next morning, when I woke up, I was in a stripped cell, you know, and I was all messed up and I started banging on the door, you know, because I was, you know, really frightened.

Banging, banging, banging. So they came, they opened the door and there was a doctor with them and she explained to me why they had to put me in there. Right? She says that, you know, "You had a nervous breakdown, you were -- everything was closing in on you," whatever it was, and she says, "We put you in the cell," and everything.

So I told her I didn't want to be in there. I says, you know, I can't make it in there. She says, "Well, the only reason we're keeping you there is for your own protection because you got suicidal on your record."

MS. SILVERMAN: I move to strike this. I think it's irrelevant to the issues.

MR. GOETTEL: Well, it could have relevance to the condition of the patient at the time he was transferred out.

MS. SILVERMAN: Well, I also think there is some hearsay coming in.

MR. GOETTEL: There's no question there's hearsay. There's no question that the witness probably isn't competent to evaluate his condition.

However, conceivably, the hearsay constitutes admissions against the defendants since I assume the doctors who told him these things are employees of the New York State system.

MS. SILVERMAN: This would be the doctor at Clinton.

MR. GOETTEL: She's still an employee of the Mental Hygiene or Corrections Commission, one or the other.

MS. SILVERMAN: I just note my objection for the record. I think that the relationship is somewhat --

MR. GOETTEL: I think in the final analysis, whatever your medical records show about his diagnosis at Clinton probably is more probative.

Are you going to put that in evidence?

MS. SILVERMAN: I do not have them, no. It's very difficult --

MR. GOETTEL: Wouldn't his readmitting records show his --

MR. SWEENEY: Yes, that's here.

MR. GOETTEL: It's going to come in through a competent source eventually.

Q Describe what the conditions were of the cell that you were placed in.

A It was a room, you know, a stripped room with just a mattress on the floor, right, and, you know, nothing else. I just had my, you know, my underwear on. I was stripped down, you know.

Q How long did you stay in this cell?

A I stood in there about eight or nine days.

Q Did you stay in there for twenty-four hours a day?

A Yes.

Q Did you receive medication?

A Yes.

Q How often did you see a doctor?

A Well, the doctor used to come around every afternoon over there.

Q How long did you stay at Clinton?

A About nine days I stood at Clinton.

Q Where were you sent from Clinton?

A Back here.

Q Did you see a psychiatrist before you were sent back?

A Yes, I seen the prison psychiatrist in Clinton. Then I seen two outside psychiatrists in the prison. I spoke to them for about, you know, a half hour, forty-five minutes and everything and then from there, they sent me to the court, right, and I seen the judge and then three days later, they took me back here, you know.

Q Where were you placed when you returned to Matteawan?

A Back on ward 8.

Q Is your program basically the same since you have been back as it was before you left? Do you see a psychiatrist for evaluation about every six weeks?

A Yeah. Well, now, the way it is now, I don't go up to 21 for evaluation. We got our own ward doctor now, Doctor Chakir and he sees us.

Q Do you receive medication now?

A Yes.

Q Do you see a psychologist?

A Yeah, I see a psychologist.

Q You see a psychologist once a week?

A Yeah, I see once a week individual and once a week for group therapy.

Q How often have you been evaluated since you returned to Matteawan in February 1975?

A About twice, I think, three times by -- because when I came back, they put me on ward 6 and we had our own ward doctor there, Doctor Shaeffer, right. He used to see us himself.

You know, and everything, and he was a pretty good doctor, you know, because like when he was on ward 6, he used to come on the ward every day and rap to us, you know, and talk to us and everything, you know, take out the time to talk to us and everything.

Unfortunately, he ain't here no more. He quit. But then he had a little incident then. They put us on ward 3. Now, we got Doctor Chakir for our ward doctor.

Q You see him for evaluation?

A Well, really he don't call us down for evaluation to see us or nothing, you know, like we go down there. Like, he'll come over and talk to us and everything like that and as far as going back to evaluation to 21, they don't take us to evaluation at all.

MS. BLOOM: I have no further questions.

CROSS EXAMINATION BY MS. SILVERMAN:

Q Mr. Poveromo, you testified about some incident in January of 1975?

A Yeah.

Q You were not directly involved in that incident, is that correct?

A Well, no, not really. No, because --

Q You were just a witness to that incident?

A No, I wasn't even a witness to it. You see, I was actually -- I got involved in it after a while because, like I said, the inmate is on my ward and he's, you know, -- he wasn't really doing nothing, you know.

Q You were not involved in that? You were just on the ward at the time this occurred, isn't that correct?

A No, I wasn't involved, but actually --

MS. SILVERMAN: I have no further questions.

RE-DIRECT BY MS. BLOOM:

Q Did you have any conversation with the officer that was involved in restraining the inmate in question in January of '75?

A Yes.

Q You had conversations with the officer. Did you have any conversations with the inmate in question?

A No. Well, they had restrained him and they took him to the jail ward. Then all of a sudden, like I say, a whole bunch of other officers came on the thing and they started like grabbing everybody, right, and we got involved.

Q Did you get involved in a fight with anyone else?

A Yeah, I got involved with -- I think like I say because one of them tried to -- one of the officers, McCall, right, tried to restrain me, right, because I was --

Q Tried to restrain you?

A Yes, trying to restrain me and, you know, to defend myself and all of a sudden the lieutenant came, Batista and everything and he started talking to us and I explained to him what happened, right.

I says the officer McMann had no right, right, to put his hand on this inmate. It's not his ward.

Q Why did the officer have to restrain you?

A Because I was upset, you know, and everything. They were choking him and everything and this guy was hitting him in the face for no reason at all.

MS. BLOOM: That's all.

MR. GOETTEL: Mr. Poveromo, I understand that you had an evaluation two days before this fight occurred?

THE WITNESS: Yes.

MR. GOETTEL: Do you know what the doctor's opinion was of your condition at that time?

THE WITNESS: Yes.

MR. GOETTEL: What was it?

THE WITNESS: He says that he was going to keep me here, right. He says a little longer because, you know, I was emotionally disturbed and everything. Right? I only talked with him for about a minute and a half, two minutes.

As soon as I went in there, he says--Doctor Sherman. He looked at my records. He says, "Listen, Mr. Poveromo, I'm going to keep you here a little longer."

He says, "Because I don't think you're ready to go back to prison yet," and everything.

MR. GOETTEL: Then after this fight, they immediately transferred you to Clinton?

THE WITNESS: Yes, they transferred me out.

MR. GOETTEL: At the transfer unit, were you seen by any psychiatrist or psychologist?

THE WITNESS: No.

MR. GOETTEL: You just stayed there until you were then sent to Clinton?

THE WITNESS: Right.

MR. GOETTEL: That's all I have.

MS. SILVERMAN: No questions.

(Whereupon, the witness was excused and withdrew at 11:40 a.m.)

oOo

LAWRENCE SWEENEY, having been previously duly sworn, resumed his seat as a witness and testified as follows:

MR. GOETTEL: Doctor Sweeney, you are still under oath.

CONTINUED DIRECT EXAMINATION

BY MS. SILVERMAN:

Q Doctor Sweeney, your background and previous to that, you had mentioned the different units within the Fishkill Correctional setting where you had, shall we say, duties.

Could you explain to the court the different setup here at Fishkill, the different units?

A Yes. In the first place, it should be understood that it's a fluctuating situation. It's not a static one. We had two units of Actec transferred down here.

Q What is Actec?

A Well, that was a special program up at Dannamora or Clinton which was transferred. Half of it was transferred to Greenhaven and half of it came here in July.

Q 1975?

A Yes, '75. There were two programs that were transferred in here, one of which was felt not to be productive and was gradually eliminated. The other program has been productive, but because it is a cohesive part of the whole Actec operation, it is at the moment supposedly going to be transferred over to Greenhaven.

Q What does Actec stand for?

A Well, that was a special training program, something similar to what we're trying to write right now. You have prisoners who adapt very well to prison, serve their time and seem to have no great difficulties.

You have other people who become seriously mentally ill while serving time and have to be appropriately admitted here to Matteawan.

Then you have a third category of individuals who really are a potpourri, maybe various and sundry reasons why they cannot adapt to prison life. They do not require a hospital such as Matteawan, but there should be an intermediate step or halfway house or whatever we're finally going to call it.

We also have the diagnostic and evaluation unit. Therefore, there are two ways in which a patient may enter Matteawan. He may be so seriously ill at another institution that their consulting psychiatrist will see him and recommend that he be admitted.

Now, he may, depending on the area of New York State in which they are located, they may have difficulty in obtaining two outside physicians to carry out a committment or they may be uncertain as to whether the man is that sick.

In either case, that man would be sent to D & E and we have a sixty-day period according to Mental Hygiene Law in which we are allowed to make a determination that one, this man is too sick to carry on in prison and does require the services of Matteawan Hospital or, that, no, this isn't the case and that with appropriate programming and with other refurbishing, medication, et cetera, he may be returned to prison.

The other avenue of entry, of course, is a direct commitment from an outside institution into Matteawan by 408.

Q 408 is what, what part of the law? Is that the Correction Law?

A Yes, and it's a two-physician commitment ordered by a judge. The psychiatrists are ordered by the judge and then the judge signs the appropriate papers when he is satisfied that the psychiatrists' opinions are appropriate to the action.

Q What does D & E stand for?

A Diagnosis and evaluation. Actually, some treatment takes place there.

Q If an inmate comes to Matteawan through a direct 408 commitment, how is that commitment obtained? You explained. Is that on the basis of two individual psychiatrists?

A That's correct.

Q And a court order?

A Correct.

Q Now, if he comes through D & E, is that the same procedure?

A Yes, it's the same procedure. Once we decide that this man is not going to be able to return to prison without further treatment, we initiate the 408 here. We ask the judge to assign, in Poughkeepsie, to assign two psychiatrists.

They come down and see him. They furnish their reports to the judge and the appropriate papers are made out and he is then transferred from D & E to Matteawan.

Q You have explained what D & E is, but could you explain what the patient and D & E -- what type of services he may receive?

A Well, primarily, diagnostic, of course.

He will be seen by psychologists as well as psychiatrists as well as a social worker.

There may be information, say from Creedmore or some other institution where he's been previously treated that should be obtained.

Psychometric testing may be carried out by the psychologist as well as interviewing to get some picture and cross section of this man's personality, his assets, his liabilities, talents, et cetera.

MR. GOETTEL: I don't understand why we are spending time on D & E. It isn't part of the exit procedure. They don't go back out through D & E, do they?

THE WITNESS: If a man is not admitted to Matteawan, he would go through D & E back to prison.

MR. GOETTEL: When someone has been committed to Matteawan and what we are dealing with are persons who have been committed and are being transferred out, you don't use D & E to evaluate them out, do you?

THE WITNESS: No, sir.

MS. SILVERMAN: It was just really

by way of background.

Q Could you explain to his Honor then what is Matteawan State Hospital?

A Well, Matteawan State Hospital is a hospital in every sense of the word despite some of the publicity. The main difference being that both the motivation of the psychiatrists as well as the patients are different in a civil hospital in that the patient, in getting better, goes home.

Here, in getting better, the patient goes back to prison.

Q You have explained that an inmate is committed to Matteawan only through a 408 procedure. That is the only means into Matteawan, is that correct?

A That's correct.

Q Once an inmate is here, let's pass onto what Matteawan is like. That is, for instance, what is the staffing here? Perhaps we could start with the staffing.

A Well, four years ago, they had fifteen psychiatrists. We now have seven counting myself.

Q What is the population or maximum population?

A Presently, it's at 319.

Q How long has that been the population?

A Well, a month ago, for various reasons, we were down to about 297. About four months ago, we were at 320. I would say the population of Matteawan is 310 plus or minus ten.

Q Is this an all-male facility or male and female?

A No, there are female patients. Two at the present moment.

Q You are including them in that toto figure, is that correct?

A That's correct.

Q Could you then pass on, Doctor Sweeney, to the staffing at Matteawan for these patients?

A Well, we have to pick the thing apart a little bit. Matteawan is, in a sense a separate unit, and yet, D & E is contained within the Matteawan building.

However, it is completely divorced by locks, barred doors, et cetera, feeding systems, different systems. They do not mix because technically they are inmates.

Now, the people in Matteawan are, of course, patients and the rules and regulations are entirely different in the sense that inmates -- there are certain sanctions against misbehavior on their part.

There are no such things and should not be as far as the patient is concerned. Now, then, the staff consists primarily of one general medical doctor for Ward 2 which is the sick bay or infirmary, if you will.

The six psychiatrists I have divided up among the twelve wards that are in action at the moment. We have several wards closed for renovation at this time.

Q How many, did you say?

A Twelve wards.

Q You said some were closed?

A We have several closed for renovation. Each doctor has two wards. Doctor Chakir, for instance, has Ward 2, the infirmary, and Ward 3, the seclusion ward because these are the most difficult spots and he is extremely capable.

The seclusion ward, of course, has a large population, I mean relatively for it, of about twenty-one people who are there at their own request and are called census patients and they stay there.

They may be there for any number of reasons, inability to adapt to population. We have one man who testified against the Mafia. He wouldn't be housed anywhere else. He feels it's the only place he's safe.

Several things like that. From time to

time, a patient will request to go to Ward 3 just to get out of population just as we might go away for a weekend to get away from it all.

I think that's a fair request from a patient and it is usually honored unless he abuses it too much. We do have a few fellows who obviously have been tried on open population and seem to rather regularly get into difficulties, whether it's stealing somebody else's cigarettes and getting pounded for it or something of a more major order.

One finally decides that there's not much sense in shipping this man back and forth all the time. He might just as well become a census patient on 3 where as a census patient, his door is open.

Q A census patient is on 3 or 2, Doctor?

A On 3 we are talking about. I haven't gotten to 2 yet. The other patients will be in there from time to time because they have had a fight tonight and the one guy is perfectly willing to drop the issue and the other guy wishes to continue it.

So he is sent into Ward 3 and it's cooling off. Those patients have their door locked at night and at various times during the day. Actually, once they settle down, they're permitted a good deal of freedom at the discretion of the officers or the doctor or the nurse or the social worker and on that particular ward, we have a steady assignment because that is a trouble spot. I mean, that's where the patients need and get the most attention.

Now, the infirmary serves three purposes actually. That is Ward 2.

Q These are both Doctor Chakir's wards, is that correct?

A That's correct. There are a certain number of elderly patients on the infirmary ward and you might say, well, why aren't they in the elderly and handicapped unit here.

Nobody can be in the elderly and handicapped unit who has a mental illness. So that these people are, you might say, census patients on Ward 2. There are some workers as well, working patients.

It is, of course, primarily for acute illnesses, sore throat, whatever, flu and so forth, broken hand and what have-you.

Q Pathology as opposed to --

A Yes. In addition to that, however, we have felt that any patient who is in sheet restraint should be up on Ward 2 because the nursing service there is heavy personnel-wise. The officers service is heavier.

In other words, there again, better observation, more careful supervision to what is happening. Plus with more people, they can consistently get the people out of sheet restraint for exercising, going to the bathroom, eating, whatever it is.

That is the nature of Ward 2.

Q Explain to the court what sheet restraint is.

A Restraint is utilized in an individual who is either dangerous to himself or is running around and taking the place apart or irritating all the other patients and it's for his own protection because pretty soon, they're going to get tired of the nonsense and the officer will say, "Why don't you get the guy out of here before somebody pounds him."

Now, he is taken up to Ward 2 and put in a camisole and the glove portion of the camisole is tied to the foot of the bed. He is lying flat on his back and he is held on by a sheet which covers the major portion of the body.

There, this is to keep him from swinging at anybody or whatever it is that's going on with him at the moment.

Q Just before we pass on to a different ward, what is the setup of Ward 2 physically? Is it a dormitory or individual --

A It's a double dormitory. It's a mirror image. The officers station and the toilets divide the place in half. This end tends to be the census patients and this end we tend to keep the acutely ill and/or those who are in sheet restraint.

MR. GOETTEL: You are using the expression "census patients.". The way you have been using it, do I understand you to mean those who are more or less permanently there?

THE WITNESS: That's correct. Others would be considered visitors for the length of time that they require that special service.

Q Are the people at either end of Ward 2, are they in a dormitory setup or are they in individual rooms?

A It's a dormitory.

Q You have explained Ward 2 and Ward 3 and those were categorized as Doctor Chakir's wards.

A Yes, Doctor Factora has Wards 6 and 8.

Q Could you explain what those are?

A About a year and a half ago, we decided that we needed a special ward for acting-out patients. It was my idea that if we had a couple of trouble makers in a ward and a couple here and a couple here and a couple here, we were much more likely to have a large-size precipitation.

If we put all these people into one unit and obviously, there was some opposition to that in terms of putting all the dynamite in one box, I still felt that if we kept the population down to below twenty and we added additional officers relative to the numbers, that this would be a very good thing and it has so proven to be.

In fact, the patients themselves approve of it and speak highly of it.

Q What ward is that?

A That's 6.

Q What is the physical setup of Ward 6?

A It's an open dormitory, day room. Dormitory upstairs, day room downstairs just like everything else around here except 14 and 16 happen to be on the same floor.

That is, the day room is here, there's a corridor leading into their dormitory. The same would be true about 16, 18, 14 and 20.

Ward 8 is a committing ward. It only holds twenty-eight at maximum, which, of course, is suitable for admitting. Most patients are not there much longer than ten days to two weeks until some evaluation of them is carried out and then a decision, which is a multi-lateral decision by program and by psychiatrists and a social worker and a psychologist as to where this man might best fit.

He might be regressed and severely schizophrenic and he'd probably go to Ward 7 which is the regressed ward. He might be a severely acting-out patient, manipulator. He might go to Ward 6.

He may be a pretty well adapted individual who, with treatment, is going to work out all right. He may go to a working ward.

Q You have explained Doctor Chakir's wards, Doctor Factora's. Could you pass on, Doctor Sweeney, and explain the division among the other psychiatrists here with respect to the wards?

A Well, Wards 10 and 12 belong to Doctor Maciejewski, and they're semi-working wards and Wards 9 and 11 belong to or are assigned to Doctor Feldman and they are semi-working wards.

Wards 5 and 7 are assigned to Doctor Neurenburg. 5 seems to be primarily a younger group and more restless, short-fused sort of individuals. Their frustration tolerance is very low.

As I said, 7 is a regressed ward. Now, Doctor Sirman is divorced from all of this during the day in that he has D & E and that's his job. But Doctor Sirman gets into the act because everybody takes a tour of duty nights and weekends and therefore, anything after four-thirty or on a Saturday, Sunday or holiday, any one of the physicians, including the medical physicians, might be the medical officer of the day and be called in to take care of whatever, a fight or whatever happens.

Q So the psychiatric staff, in addition to yourself, consists of the six doctors you have just mentioned, is that correct?

A That's right.

Q Now, Doctor Sweeney, in addition to these six doctors that you mentioned, what other staffing is there of the Matteawan State Hospital?

A Well, we have psychologists and we have psychiatrists. We have social workers and we have nurses, of course.

Q And correction officers?

A And, of course, in the other part, we also have correction counsellors. However, that has nothing to do with Matteawan and, of course, the officers are the backbone of the setup.

Q Could you explain the interaction, if any, between the psychiatrists and the psychologists and social workers?

A Well, it's a little labored because it has been undergoing change. Historically, the primary move was the psychiatrist's. I think with the advent of Doctor Agnew in '72, the team concept which was growing in psychiatry in America was introduced.

When I arrived here --

Q What is the team concept?

A Well, I'll get to that in a minute.

When I arrived here in October '73, Matteawan was split into two halves, the Dannamora side and Matteawan side and each had a chief coordinator or program coordinator, both of whom were in the field of psychology and then they had a psychiatric nurse on each ward and they had either a social worker or a psychologist on each ward.

Now, this had many advantages in some directions and it had disadvantages in other directions.

Namely, the nurses were on from eight to four, but they therefore weren't there to give out medications prior to breakfast and they weren't there at six o'clock or at nine o'clock, so that it threw the whole load on the supervising nurse who was on at night to get to each sick bay and distribute this material.

Today, we have nurses at all stations around the clock. The psychologists had a great advantage in that they were on their wards all the time and they knew their people quite intimately.

MR. GOETTEL: How many psychologists are there?

A I'm talking historically, sir. At that time, we had either a psychologist or a social worker for each ward.

Now, what has transpired in the ensuing year with -- well, even before the crunch in the budget, a total reorganization took place again through the budget department in terms of planning this place as a strictly correctional facility and the officer plot plan hurt us terribly in that we lost about fifty officers.

The next thing that happened was that they brought Actec in, so instead of having general confinement, we actually had special programs that required some people.

In the ensuing months, we have lost a couple psychologists; we have lost a couple of social workers and these have not been replaced.

At the present time, there is a mechanism for rehiring, but it requires justification in at least two areas, not just locally, but both in personnel and that also in audit and control.

For instance, I have been trying to hire a doctor for, it must be four months now, and a man that I consider quite well qualified, but nothing has happened. Phone calls and letters have accomplished nothing.

Now, I can understand why this is taking place because of the transfer of Matteawan to Mental Hygiene is relatively imminent. Then I can see why the Correction Department doesn't want to hire additional personnel until they make up their minds what they are going to do once Matteawan is gone from here.

MS. SILVERMAN: I would like to stop here for a minute and clarify the record. There apparently is some possibility -- Doctor Wright who will testify at some point, will explain it in more detail, that Matteawan State Hospital which is currently within the Department of Correctional Services, will pass into the hands of the Department of Mental Hygiene.

As I said, I don't know if this has been accomplished yet, but I think --

MR. GOETTEL: How can that occur without a change in Section 400 of the Correction Law?

THE WITNESS: It can't. No, sir. That is supposed to be the first order of business or at least one of the early orders of business of the legislature in this session.

The law will have to be rewritten first.

Q Now, Doctor Sweeney, I just would like to pass on. What is the current relationship here of the social worker, the psychologist and the psychiatrist?

What part does each play?

A Well, they're essentially playing the parts that they played two years ago. However, what we've tried to do, because of reduced numbers, is to work the thing into a more cohesive union.

In fact, we have just written this and it's being implemented starting the 2nd of February.

Each morning, each psychiatrist accompanied by those social workers and/or psychologists who are assigned to that ward and a nurse who has those two wards that he has, will make rounds together.

Q As a team?

A They will initially and daily discuss at least one case in detail and they will keep a record of this because what I was finding was that the aggressive patients are getting all the attention. He's seeing the doctor every day that he walks on the ward.

The other guy is falling in the crack and he's taking a nap under the table somewhere and he doesn't get seen, period.

Now, evaluation takes care of that. That was the advantage of the evaluation unit.

Q Before we get there, I just want to ask you one question. Who is in charge of the social workers and who is in charge of the psychologists? Is there a chief?

A Well, there's a chief psychologist and there's a chief social worker. As far as function on the ward is concerned, the final decision by law has to be a medical decision.

Q Who would that rest with then?

A That would be the ward psychiatrist.

Q Passing on then to evaluations of the patients which you had started to explain, could you explain to the court what an evaluation is and who does it?

A I don't know exactly how this thing developed except that I can suspect that with a reduction in the number of psychiatrists here instead of the psychiatrist being directly responsible for a ward and their patient, the program was turned over largely to the program coordinators aided and abetted by a psychologist and/or social worker and nurse for each ward and the doctor's function, when I arrived here on the ward, was largely two-fold.

On the ward, he came in and saw anybody that wanted to see him about whatever, and two, he reviewed those requesting to go to sick call which is held up on Ward 2, the infirmary, and if he knew that this was a patient who was repeating and going up just for the social hour really, he could meet his friends from other wards and so on, he would deny that person.

Somebody else had a sore throat could be taken care of on the ward, he'd be taken care of on the ward. If what was required, the materials, were not available on the ward or this was something medically or surgically that he felt was beyond him as a psychiatrist, it was sent up to ward 2.

So that was his basic function there and then, of course, if any altercations or anything like that came up. He would then, having accomplished that in the morning, go up to Ward 21 where, on a wheel, all the patients rotate and every four to six weeks, a patient is reviewed.

Now, again, patients were falling in the cracks because a patient may elect to refuse evaluation. That is, he doesn't want to go up to Ward 21. Maybe it interferes with his job in the laundry or something like that.

But then, it's the doctor's duty to go down and see him on his ward and that was not always being done.

Q When you say Ward 21, was that a resident ward?

A No, Ward 21 is just a bunch of offices. It was condemned for use of patients, I guess ten years ago because it's on the third floor. It's at the tail end of the building. There's no proper fire exit, et cetera. In fact, that's the first area that we have renovated now.

Q When you say then that the psychiatrists after he finished these morning duties which included sending people to sick call, he then went up to Ward 21? Is that correct?

A That's correct.

Q He then called up patients individually?

A No. The list is prepared in the administration building and the doctor would be assigned so many cases to see this morning and so many this afternoon.

Now, available to him at that time would be the blue folder which is the total legal-medical folder which is kept in the administration building and also the ward notes from the individual's doctor.

That might contain a note by the social worker; it might have a note by the psychologist; it might have a note by an officer or nurse or all of them.

But there again, there was an inconsistency and that's one reason why I'm pushing this team rounds every day.

Q Now, going back to Ward 21, you said that from administration, a list would be prepared for the particular doctor to see, is that correct?

A That's correct.

Q Who did he see, inmates from his ward or other wards or how was that determined?

A Well, there again, we had a bit of evolution. We had a doctor here who had a very disturbing way of doing things. They used to just rotate them around willy-nilly. Not so much willy-nilly, but the idea that maybe is the patient is seeing the same doctor all the time, maybe both the doctor and the patient are in a rut.

If we mix it up, it will give us a fresh opinion. But what was happening, was that Doctor A would come in and see Doctor B's patient and change the medication without even discussing it with Doctor A.

Doctor A, you know, might have something -- I mean, after all, he's familiar with the guy and he's moving in a certain direction.

So at that point in time, I asked Doctor Agnew if it wouldn't be wiser and he agreed with me, that the ward doctor responsible for the patient will see that patient in evaluation.

Q When was that change implemented?

A That would have been about March or April of '74. Now, there are, of course, exceptions to that. There may be a good reason why a doctor doesn't want to see a patient or a patient doesn't want to see a doctor due to some past experience, in which case, another doctor will be assigned.

Q Could you explain to the court, Doctor Sweeney, when that would occur, the types of circumstances?

A What do you mean when that would occur?

Q When the doctor assigned to a --

A The patient may be a paranoid schizophrenic and he was in a fight and he thinks the doctor sent him into seclusion too long or some such situation like that.

We're dealing with rather tender-skinned people, so that this kind of friction is not uncommon and in order to get the patient a fair shot, I don't think the doctor would be prejudiced, but I think the patient would be loathed to open up to that doctor.

So we will assign, from time to time, or I'll get letters from patients asking specifically to see me.

Q Does --

A If I personally can work it out, I'll do that. If I'm too tied up with other things, this sort of thing, I'll have somebody else do it. But occasionally, they will specifically ask for me, and I try to accommodate them in that matter.

Q What is the purpose of the evaluation?

A Well, I think if this new system which I have just described which isn't new, of course -- it's just new here and it isn't really new here. This is what probably went on ten years ago.

Q You mean the one that went into effect --

A Will go into effect February 2nd. I would think that as that becomes well systematized, that will take the place of evaluation because certainly all the input is there, everybody is aware of what everybody is thinking about the patient.

The patient has a chance to open his mouth in group as well as if he so desires, individual discussion with his assigned psychologist or his doctor or what.

I would think that 21 might phase out except for one thing that preserves it and that is any and all court action. Any retention hearings must be testified to by a licensed physician and that therefore puts the burden on either myself, Doctor Feldman and Doctor Maciejewski.

Any other court action, hearing, jury hearing up in Poughkeepsie or Section 78 and so on, all of these things will have to be still reviewed.

Now, whether the doctors come to preferring to do it on the ward and I don't think they will because we don't always have rooms available immediately adjacent to the ward, and I think that 21 is you get the patient away from all his buddies and any interference and any ward action that's going on or ward meeting or whatever and you do have a chance to sit down and have a good twenty, thirty minute confidential discussion with him reviewing the record with him and pointing out things and discussing with him the pros and cons of -- let us say it looks as if he's ready to go to prison.

One of the things we're trying to obviate is the prison package. Let's call it that.

There was a policy instituted here before I took over that you did not tell a patient because he's liable to go back to his ward and blow his stack and get everybody else upset.

I think it was Marty Ogulnick who pressured that issue and felt that it seemed a bit unfair even though administratively it might serve a purpose.

I think now with making sound rounds, everybody on that team is going to talk to the guy and say, "Hey, look, you know there's always a potential for recovery and there's always a potential there for transfer out and you got to start thinking about that, not dropping them in one way."

In fact, just the other day, a patient

said to me, "Well, now, with this transfer of Matteawan, am I going to go to civil or am I going back to prison?"

I said, "Hey, I don't think this thing is going to happen for six months at least and who knows where you're going to be six months from now. You know the word. There's always a potential for a return to prison."

Q Could you explain to his Honor the means by which a person is retained here after his initial commitment and how long his initial commitment may be for?

A Usually we have to request a retention order within four months of his admission to Matteawan and appropriate evaluation and testimony is then offered before a judge.

Q At what point?

A I'd say that would be about six months. The judge would then order a retention of six months duration. The next time around and that would be some three or four months, because we have to prepare these things about sixty days or more in advance and get it started, if again positive and approved, the retention would most likely be for twelve months.

The judge has discretion, but it does tend to be a progression. The third time around, it might be a two-year retention.

Q A person cannot be retained for more than six months without a further court order, is that correct?

A That's correct, and at any time that, for instance, if we are having a retention hearing today here and there was some factors operating that made it look as if the patient may be out of here very shortly or vice versa, he's getting some dental work done here and we don't want to interrupt that and he understands that when his dental work is finished, we'll send him out, then the retention order might be for three months.

Q You testified there is going to be a new system going into effect in February with respect to evaluations, if I understand you.

A Not really a new system. It's a tightening up of the nuts and bolts in the old system.

Q In any event, there were and there will continue to be periodic evaluations of the progress of a particular patient, is that correct?

A Yes, that's correct.

Q Just briefly, Doctor Sweeney, what is the purpose of that evaluation, to see how he's progressing, is this right?

A Well, certainly from my view point, the primary purpose of that evaluation is to see where the patient is, where is he going, are we doing the right thing, is his medication appropriate, is it too heavy, is it too light or should he be on something else.

You have available to you a lot of reports. Here's a man who's getting into a fight once a week. Something's cockeyed there. That shouldn't be.

Now, you do occasionally get the rare case that no matter what medication we use and what doses, we don't seem to get very much control. But I would say that that is maybe five guys out of three hundred.

Q What mechanism is employed here to determine whether an application should be made to continue to retain the patient or to determine whether he's suitable for --

A Obviously, if he's not made any progress and certainly is in no condition to be transferred out of here, he should be retained until some further progress is made that makes it reasonable to expect that he can certainly get a try at adjusting to prison.

Q What criteria is applied in determining whether to apply for a retention order or to determine that this person is no longer suitable for retention at Matteawan?

A Well, I just answered the first part of your question. I think what you're asking me is what factors convince us that a man should leave.

Q Exactly.

A I would say probably, number one would be maximal medical benefit. For example, a man who is on no medication at all, getting along perfectly well in this atmosphere, has a job, attends school, so on and so forth, is clear and coherent in discussing every matter, certainly he does not belong in a hospital by law.

So that that's the end of that and as a matter of fact, in a sense, we have no choice in that matter.

There are perhaps more cases that are borderline where we will, with some doubts in our mind, we will have two or three or even five or six of us sit down together and decide can this guy make it, should he be kept longer.

If so, how much loner. On the other hand, you have other pressures. There's no secret in the system that many of the institutions, once a guy has a Matteawan label, are biased about him. There's no question that the inmates are biased about him.

Even right here, these fellows get upset about being at Fishkill because nobody calls this place Fishkill. They call the whole operation Matteawan simply because, again, it's historical.

Perhaps the thing that infuriates me most trying to run this operation is when I send one of our very best men and in ten days, he's back on a 408 which means they initiated that 408 the day he got there.

They never gave that guy a chance. One of the things that Doctor Gillette, who is the regional director until he took a job down in South Carolina, and I used to hammer out, was a guy arrives elsewhere, they put him in medical observation.

Now, one, they have no expertise that we don't have and, two, we have had this man here maybe months. What are they going to learn from putting him in the box for ten days that we don't know?

We have taken the trouble, this was Doctor Gillette's idea, to send along a prescription of how this man should be managed, what programs he requires and so on.

You know, you can't make people read things and you can't make them do it either, so that I don't know where the ball gets dropped, but it sure gets dropped a lot.

Q How, administratively, does a determination to send a man back to a correctional facility get implemented? In other words, does someone make a recommendation? Does someone approve it?

How is that administratively implemented?

A First, let me clean up your question. I don't think anybody is ever shipped out of here administratively. That has to be a medical decision.

Now, once the doctor has written a review which adds up and doesn't contradict, let's say, a writeup briefly before or there is solid evidence that this man has turned the corner, that is reviewed by me and that's the kind of thing I check for.

Now, once I countersign it, then the chief clerk begins to put the whole thing in motion informing Albany that we have X men to leave, arrange the trips, we have recommended that he go here or here because of program.

But, there again, in such a large system, it falls down. If they've got five beds at Clinton and they've got beds at Walkill, you know where the guy is going to end up. He's going to end up in Clinton. There's nothing we can do about it.

The final okay on the total transfer, of course, was Mr. Ternullo's privilege as superintendent of it.

Now, with the part-time appointment of Doctor Wright as acting director, technically it's his final signature.

Q At this time, then it's Doctor Wright and after Doctor Wright would be the superintendent did you say?

A Well, no, the superintendent would not sign them any more if Doctor Wright were here five days a week. But he isn't. So we're in that transition period where some days Doctor Wright is signing and some days, Mr. Ternullo is signing.

Q You have explained the dormitory situation here. Could you also explain the privileges, if you want to call them that, that the inmates have here, being that it is a State hospital.

A Surely. Well, of course, outstanding and it has caused a great many guys to come back here, was simply because of visiting.

We have all-day visiting from nine to four. I wish that had never happened because I think it's an awful tough baby to lick at this point in time. We have a revolution here if I cut it back.

Now, it's very well for some outside consultant to say, well, it's interfering with the therapy;

why don't you just make it six hours a week, three hours on two different days.

Well, not after they've been doing this for four or five years. You're just not going to get away with that. That is foremost.

Of course, that is added to better by excellent transportation.

Q What do you mean by that?

A There's no problem getting from New York to here and about eighty-five percent of our population are New Yorkers. You know darned well you send that man to Attica, you send him to Clinton, and his family has got an all-day or two-day trip.

I had a man in Walkill who came back and said, "Gee, you know, I love my family. Three hours a week, the heck with that stuff."

I don't think you can simply say that because we have open wards, that does the trick because there are people who don't like open wards. We have them here who want to be on Ward 3, the seclusion ward.

But obviously, the major population of 16,000 -- major portion of the population of New York State are, let us say, jail wise. They do their time and that's that. But we roughly have a turnover of 600 to 700 patients a year here.

Now, these obviously are people who, for one reason or another, cannot tolerate or handle prison or maybe only for a short time.

Very often, the man initially incarcerated is going to have a tough time adjusting. Maybe after he's had a trip through Matteawan and sort of accepted what he's stuck with, whether it's five or whatever, he may go back to prison and make out fine.

A lot of them do not want the Matteawan label. A lot of them regard this as a palace, an easy bit and that's the way it is. It is an easy bit.

Q You described the visiting privileges and the dormitory setup. What about disciplinary infractions?

A There can be no discipline in Matteawan. They are patients by definition. Therefore, if they pop an officer or a doctor or whoever, they cannot be sued for assault; whereas, if they are in general confinement, yes, they can and they can get added time.

Any infringement of the rules, they may get a ticket and they may lose good time. We do not have any such mechanisms.

Q You do not have superintendent's proceedings or adjustment committee proceedings here?

A No.

Q I asked you what the criterion was that was applied to determining whether an individual is determined to be suitable for transfer back to a correctional facility, and you testified that he had reached the maximum medical benefit that Matteawan could offer.

Could you be more specific or explain that in any further terms or does that pretty much cover it?

A I think you certainly would be one looking at the original commitment, how sick was he when he got here in the first place.

If you're not very happy about that commitment paper, at least what was the admitting physician's view of this guy when he got him here. I think there are some very subtle points here.

There are patients who are genuinely upset. Like, let us say Clinton and just by virtue of getting here, the guy says, "No, I'm fine now. Just as long as I'm fine, it's okay."

Now, I don't think he's putting on. I think he was upset at Clinton. He just didn't like the whole lash out. The minute he knew he was going to be near New York and his relatives and everything else that went with it, his depression and suicidal tendencies dissipated.

I have had that happen many times because I was the admitting physician for about the first eight months that I was here.

You also get guys that have pulled a put-on. They make no bones about it.

Q What do you mean by a put-on, Doctor Sweeney?

A Well, one guy I admitted, I looked at this sheet and it said this man's body and mind are being consumed by a gorilla. I don't know whether he was pretty good at sizing people up.

I looked at him and I said, "Hey, how is the gorilla," and he cracked up. When I told him that wasn't even original, he got quite upset.

This happens. But at that time, we were on a different kick. There was a great deal of adverse publicity in Albany about people getting out of Matteawan and out of prisons and getting on the street and committing additional crimes and the then director said, "Anybody that wants to stay can stay."

Now, you know, this is getting on awfully thin ice when you are considering the 408 law.

Q You testified that a 408 commitment is based, I suppose, on the testimony, one would say, of two outside psychiatrists, is that correct?

A Yes.

Q And these psychiatrists then are not employed by a particular correctional facility?

A No, they must be outside people.

Q Have you ever had occasion, prior to your employment here, to perform the function of an outside psychiatrist?

A Yes.

Q Testifying from your experience, what does such an evaluation by an outside psychiatrist consist of?

A You're certainly given the records, their observations. After all, you are going to spend an hour or some portion thereof and they have seen this chap for days, weeks or months.

I would think it very remiss if you did not look at their records very carefully, not to become biased by them, but to be critical of them.

If they don't contain the kind of meat you want, then that's not going to be the basis, you are going to have to make your own determination directly on your own examination of the patient.

Now, in your own examination of the

patient and the records, when the records conform, certainly you're in a much more comfortable position.

Q When someone is committed to Matteawan, do you normally receive the commitment and the diagnosis of the outside psychiatrist?

A We must receive it.

Q Does that diagnosis usually or in how many cases, conform to the diagnosis that is made when the person is received here?

A You mean does their diagnosis conform with our diagnosis?

Q Yes.

A Not always unfortunately.

Q Why would that be, Doctor Sweeney?

A Well, it could be for a lot of reasons. First, I think a lot of people feel that obviously you can't send anybody to Matteawan unless he's psychotic, so they'll make a diagnosis of paranoid schizophrenia because the man is telling the doctor that the officers at Clinton or where ever, Elmira, are picking on him.

Maybe the officers are. Maybe that's just one of his kicks because, you know, he's anti-establishment and the officers are no good and so on.

I think that's a pretty weak basis for a diagnosis of paranoid schizophrenia. Call it paranoid personality, fine.

A very large number of our patients are what used to be called psychopaths. Today it's called an asocial personality or anti-social.

Q What kind of individual is that, Doctor?

A Non-conformists. They just don't give a toot about the rules of society or the rights of society.

Q Is that a psychosis?

A They want their own way. They have a very short fuse. You say no to them and they'll go punch a few windows out. I don't know what that proves.

Q Is that a psychosis, Doctor Sweeney?

A No, it certainly is not. Lack of control, but that's all.

Q In your opinion, would you certify such a person to Matteawan State Hospital?

A I wouldn't certify him to any state hospital.

Q You wouldn't consider him certifiable?

A No. Now, if he has a personality disorder with psychosis, sometimes these fellows get themselves into so darned much trouble in the prison, they do go into a depression. Then I would find that acceptable.

But then, too, I would expect that that would clear up in rather fast order and therefore, they should be discharged. That's when the fun begins.

Q Have occasions arisen here where individuals requested to be retained at Matteawan State Hospital?

A Yes, definitely.

Q What reasons do they express for such requests?

A All the things I have mentioned. It's an easy bit, visiting. I don't think I'm ready yet. I can't handle jail.

Q What is your reaction to these requests or what is the reaction of the staff generally?

A Well, I think obviously the visiting and so on have nothing to do with it. Now, where a guy is saying he doesn't think he can handle jail, certainly one would look through the record and this is where we sometimes get quite discouraged.

I may have a man that I think is perfectly capable to handle it and I think he'd give it a good try.

Q When you say handle it, you mean the correctional --

A Back to prison. But I look at the record and here this man has been in and out of here either D & E or Matteawan three or four times. Unless I can get that man a pretty good shot --

Q What do you mean by that?

A Well, I mean a good program in one of the lesser -- not maximum institutions, and I can't guarantee where he's going to go, I'm certainly going to be hesitant about sending that man out.

Let's face it. We've got a group right now that -- I've got every justification to send them out, but, you know, they'll be back in a month.

Q Passing on to the particular --

A I get tired of seeing a patient going back and forth like a shuttle cart.

Q Passing on to one or two of the plaintiffs in this action, are you familiar with a plaintiff Gully, Doctor Sweeney?

A Yes, I know Matthew quite well.

Q I show you a xerox letter.

MS. SILVERMAN: Can I mark this for identification perhaps?

(Whereupon, the abovementioned document was so marked as State's Exhibit B, today's date.)

Q I show you State's Exhibit B marked for identification, Doctor Sweeney, and ask if you can explain to the court what that is.

(Handing exhibit to witness)

A Well, this is a clinical summary on Matthew Gully's admission.

MS. SILVERMAN: I would like to offer that into evidence.

MR. GOETTEL: Show it to Miss Bloom.

MS. BLOOM: I have no objection.

MR. GOETTEL: It may be received.

(Whereupon, State's Exhibit B was marked into evidence.)

Q I show you Defendant's Exhibit B in evidence and I direct your attention to the progress note dated February 29, 1975, and I ask you would you read that to the court, please?

A Yes. It states that, "A certificate of recovery has been issued on Section 408. The patient was today discharged to transfer unit of Fishkill Correctional Facility. His maximum expiration date is 6/15/80.

"Condition on discharge, recovered. Final diagnosis --" this should be character disorder with depressive features.

Q That is an error?

A Yes.

Q Who made that diagnosis?

A I don't know. It isn't signed on this copy.

Q Let me direct your attention --

A Wait a minute. That's not a diagnosis here. That is simply the issuance of the certificate of recovery. That is proceeding by an evaluation carried out by me on the 13th and 14th, periodic evaluation.

Q What was the results of the periodic evaluation conducted by you on February 13th and 14th?

A "This man obviously has reached maximum medical benefit, and no purpose would be served in his further residence in Matteawan State Hospital. It is therefore recommended he return to a suitable program and correction facility as recommended by the program committee."

Q You were present for the plaintiff's testimony, Doctor Sweeney, were you not?

A Yes.

Q If you recall, he testified that he had been involved in some sort of altercation at Matteawan State Hospital sometime, I believe, in January of 1975.

Was the certificate of recovery issued

on plaintiff Gully related to that incident to which he testified?

A No.

Q Just for the record, then, what was the basis of that certificate?

A My evaluation as I just quoted.

Q I direct your attention to 10/21/75. Could you read what that says, Doctor Sweeney?

A Well, it's the same statement as previously. "A certificate of recovery having been issued," et cetera.

Q Now, Doctor Sweeney, on whose recommendation was that certificate of recovery issued?

A "Patient was seen on Ward on October 20, 1975 by the medical staff."

Q Did you participate in that evaluation?

A No, I was giving examinations in Albany that day. The other six physicians participated.

Q Did you approve that transfer? Were you involved in the approval of that transfer?

A No, Doctor Rigney in my absence approved it.

Q Who is Doctor Rigney?

A He was the chief of medical services.

MR. GOETTEL: That's October '75?

THE WITNESS: October 20, 1975.

Q Have you read that paragraph and are you familiar with the record?

A Yes.

Q Do you know the plaintiff Gully?

A Yes.

Q Would you give us your opinion of his mental state at the time that certificate was issued or shortly before?

A I have never known Mat Gully to be in anything but tip-top mental condition except when under the influence of alcohol.

Now, that's contained in these reports. He and I have discussed this at length. He has, on at least two occasions, frankly admitted that that was the trouble and that he would do everything in his power to be straightening and he has done well over long periods.

Q In your opinion, your professional opinion, Doctor Sweeney, in October of the middle of October of 1975, was Matthew Gully suitable for retention at the Matteawan State Hospital?

A No.

Q Passing on to plaintiff Dunleavy, I show you this document.

MS. SILVERMAN: May we mark another

record for identification please?

(Whereupon, a document was marked as State's Exhibit C for identification, today's date.)

Q Could you just tell the court very briefly what that is, Doctor Sweeney?

A This is essentially the same sort of material on George Dunleavy containing the evaluation sheets and a review of his total history.

MS. SILVERMAN: I would like to offer that into evidence.

MS. BLOOM: No objection.

MR. GOETTEL: Mark it as Exhibit C.

(Whereupon, the abovementioned document was marked into evidence as State's Exhibit C.)

Q Showing you Defendant's Exhibit C, Doctor Sweeney, I direct your attention to 4/23/75, the progress note for that date.

A Yes.

Q Actually, I see now it was 4/25/75. Could you tell me what happened on that date?

A Yes.

Q What happened?

A A certificate of recovery was issued.

Q Who approved that certificate?

A I approved it.

Q Are you familiar with the evaluation that was made of that patient Dunleavy prior to your approval?

A Yes.

Q Were you familiar with patient Dunleavy on a personal level in your professional level in your professional capacity?

A Certainly.

Q What was your opinion of patient Dunleavy's mental condition?

A Well, let me answer in some detail. I carried out at his request and at his personal psychiatrists outside of his request, two sodium amytal interviews on George.

I had had a good deal to do with him right straight along, and the amytal interview revealed no discrepancies between his conscious and unconscious memories of the instant crime.

This information he was hoping might be utilized in obtaining a review of his sentence, I guess. At that time, I felt that certainly George represented no mental illness.

He had initially shown some depressive features on his admission and certainly he had some things to be depressed about.

Q In your opinion, was he suitable for retention at Matteawan State Hospital on April 23, 1975 and April --

A No.

Q You heard Mr. Dunleavy testify, did you not, Doctor Sweeney?

A Yes.

Q He testified that sometime during March of 1975, he attempted or did, in fact, escape from the Matteawan State Hospital.

Do you recall that testimony?

A He did. Yes, certainly.

Q Did that escape form the basis of your determination to certify him back to a correctional facility?

A No.

Q Doctor Sweeney, have you given any orders to your staff here that instances of misconduct should be the basis for transfer back to a correctional facility?

A Certainly not. We have guys in fistfights every day around here. Altercations of one sort or another.

Q What are the directions to your staff with respect to certification back to correctional facilities?

A I don't give them any directions. They're all doctors. They're all qualified. They make up their own minds. It's their patient. They know him. They evaluate him.

If I don't like the evaluation, I may call the doctor up and say, "Hey, look, I see some discrepancies here, what is it you're really saying, or are you sure this guy is this or that or which way should he go."

I think in Mat Gully's case, there is an instance of that where the doctor wrote up a beautiful writeup that was perfectly innocent and in the bottom of it, he put "retained."

I reviewed the whole thing knowing Mat so well and also called the doctor up and said, "What are you talking about, retain for what? The man is recovered."

MS. SILVERMAN: I have no further questions.

MR. GOETTEL: Let's take a recess for lunch.

(Whereupon, a recess was taken by all parties until two o'clock.)

CONTINUED DIRECT EXAMINATION

BY MS. SILVERMAN:

Q I show you Defendant's Exhibit A in evidence. and ask you if you have read that.

A Yes, I have.

Q Doctor Sweeney, based on the statements therein, in your medical opinion, would Dunleavy be suitable for retention at Matteawan State Hospital?

A No.

Q Why is that, Doctor?

A Well, for instance, the statements contained herein, it quotes, "Seems to be an excellent therapy candidate, being intelligent, verbal and eager. Major symptomatology involves an inability to concentrate," and I want to come back to that.

"Extreme anxiety resulting in his pulling the skin off his fingers, moderate depression, occasional and slight rambling speech and occasional poor judgement.

"He feels despondent, sluggish, pressured and apathetic. He fears that he will be unable to tolerate the rigid prison routine."

Now, then, in the first place, there's

nothing the matter with his ability to concentrate.

This man writes some of the best briefs and writs that any of us have ever seen. Anxiety resulting in pulling the skin off his fingers. Well, that's a common feature that many people have.

Some people smoke, some people twirl their hair, some people pick their scalp. I can't get too excited about that.

Moderate depression. I think that would characterize everybody in prison, so I can't do much with that. Despondent, same thing.

There's nothing sluggish about George Dunleavy. I simply can't accept that. I think this is a statement that would fit a great many people who have some kind of a problem and who might or might not seek the advice of a private psychiatrist or psychotherapist or might attend a mental health clinic, but it certainly would not, and I have thirty-five years experience as a consultant with state hospitals and so on, it certainly would not justify a commitment to a civil hospital.

Q Doctor Sweeney, you testified before the luncheon break that in April of '75, Mr. Dunleavy, in your opinion, was suitable for transfer to a correction facility

Just so the court has some background, could you state your contacts prior to that date with plaintiff Dunleavy?

A Yes. In the past, George was law clerk in the law library. He very often would -- he had permission to contact me by phone over any incident that he thought worthy of my special attention and very often, he would head off unnecessary responses to minor problems.

That is to say, a patient might be angered about something. Maybe he didn't think he was getting the right medical treatment or this or that. He'd come downand see George in the law library and say, "I wish to write a writ on Article 78."

George would get on the phone to me and say, "Look, this looks like a simple enough problem. I think you know where the answers lie and maybe we can avoid all this," and it would very often be exactly that.

It was something that just slipped through the cracks, brought to my attention, I'd get somebody on top of it and it would be taken care of. The patient was satisfied and there was no further ado about it.

So that George Dunleavy and I had a good deal of contact.

Q Just for the record also, with respect to Gully, you, in February of '75, certified his transfer back to a correctional facility and also indicated on your direct examination earlier this morning that you concurred in the deicsion to transfer him in October of 1975.

Could you tell the court your contacts with Gully and how you came to know him?

A Well, I got to know Mat Gully on a couple of occasions when he was in fights plus whenever I made general rounds throughout the whole place, and I sporadically and unscheduledly trip the entire building of Matteawan, Mat was always alert, responsive, would come up and chat with me, shake hands and chat about anything under the sun; what was going on on the outside world, what was going on in Matteawan, if there was a problem on that ward.

Many of these men are very helpful in getting minor things that could, you know, grow into major proportions settled when they see somebody that they trust coming through the corridors.

That's one of the reasons that Mr. Ternullo, the previous security officer, Mr. Metz and now Mr. Black, Mr. Biascenti (phonetic) and all of us go through at odd times so that we can chat with anybody.

The members of the liaison committee, all of the officers of the liaison committee and those are elected officials of each ward and there's a chairman of the whole operation elected by them, they have a card which permits them to call chief of security, Mr. Mesuka (phonetic), the liaison seargent, Mr. Ternullo or myself and they frequently do.

In fact, during this interim period, I received a telephone call from James Blades on Ward 12 who is the liaison chairman at the present time about a patient who's got a hernia and isn't happy about what's being done surgically.

I turned that over to the medical department. Of course, that's not my problem.

Q But you do, in other words, in conjunction with your duties, you do make various tours of the wards and speak with the patients?

A Very definitely.

MS. SILVERMAN: I have no further questions.

CROSS EXAMINATION BY MS. BLOOM:

Q Doctor Sweeney, I would first like to ask you some questions of a general nature. Firstof all, are you licensed to practice medicine by the State of New York?

A I am.

Q How many of the doctors at Matteawan are licensed to practice medicine?

A They are all licensed to practice medicine.

Q In the State of New York?

A Three in the State of New York.

Q And the other four?

A One has a Kentucky license. One has a Phillipine license. One has a Canadian license and the fourth, I think, has an Indiana license. I'm not quite clear about that.

Q Are you licensed to practice psychiatry by the State of New York?

A I'm a QP, qualified psychiatrist, yes.

Q How many of the doctors at Matteawan are?

A The same three.

Q Three are --

A The ones with the New York license.

Q They are licensed to practice psychiatry in the State of New York?

A Yes.

Q Are you certified by the American Board of

Psychiatrists?

A No. I'm board qualified.

Q Would you describe to me what the difference is?

A Yes. Board qualified means that you have had appropriate time and training and approved residencies which have been submitted to the board and they have approved of your training.

Certified means that you have taken an examination.

Q How many of the doctors at Matteawan are certified?

A By the American Board of Neurology and Psychiatry?

Q Yes.

A None.

Q How many are qualified by the American Board of Neurology and Psychiatry?

A I think all but one have all the qualifications. That is approved residency in psychiatry and the one chap who does not have that transferred from another institution to this institution; shortly thereafter the residency program which he had gone through there was approved.

Q So there are four doctors at Matteawan who are neither licensed to practice medicine or practice psychiatry by the State of New York?

A The State of New York does not issue a license to practice psychiatry. The Department of Mental Hygiene at sometime in the past, and I'd say it was back in the fifties, perhaps earlier, decided that they needed a device to substantiate appropriate training.

Whether the man took the American Boards of not, if he had had an approved residency. At the time, the New York State hospitals had their own residency programs which were tied in with any nearby universities so that appropriate professors, et cetera, instructed.

I personally instructed in neurology at Hudson River State Hospital and Harlem Valley State Hospital. At that same time, I had teaching appointments in Columbia and Cornell Hill. New York created this device of its own accord.

Q Four of the doctors at Matteawan are not licensed by the State of New York?

A There is no license by the State -- you mean to practice medicine?

Q Right.

A No, they're issued a certificate to practice within the confines of a state institution.

Q Are there things that these doctors can't do at Matteawan that doctors who are licensed to practice medicine in the New York State can do?

A Yes. They can't enter into private practice.

Q Is there anything that they can't do within the institution?

A No.

MR. GOETTEL: How about the competency examination?

THE WITNESS: They can, of course, testify in court. That is required, that you have a New York State license to testify.

Therefore, certain specific examinations -- now, for instance, retention. We might want to know where a certain patient is at this point in time, his treatment and progress.

I might have him seen by his ward physician who might not be a licensed doctor. Now, if that patient is perfectly happy -- I mean, he's not going to put in the red, we probably wouldn't make any further moves.

If, on the other hand, because he's going to waive the thing, if he wants to go to court on the issue, then I would have the licensed, one of the licensed doctors see them so that they can so testify.

The opinions would be in conjunction.

Q So a licensed medical doctor, a doctor licensed to practice medicine in the State of New York, must testify before someone can be retained in Matteawan, is that correct?

A That's correct.

Q Do the same restrictions occur when someone is decertified?

A No.

Q Any doctor could see someone?

A That's correct.

Q Whether you are licensed to practice medicine in New York or not?

A In the State of Alabama and Georgia, I think you have to go before a panel of two attorneys and a psychiatrist to get your competency re-established.

In New York State, whether in the civil

hospital or here, it's automatic. Discharge from the hospital, your rights are re-established.

Q Does anyone have to approve that decertification? Does the director or -- do you have to approve each decertification or does the superintendent Ternullo have to approve a decertification?

A Well, actually, I would have the first approval from the standpoint of psychiatric coherency. The second and final approval would be Mr. Ternullo's as superintendent.

Now that Doctor Wright has been appointed here by the Mental Hygiene Department as acting director, he is functioning in that capacity.

Q In your opinion, what do you feel the statutory purpose of Matteawan is? Is Matteawan created to deal with, to treat psychotic patients or is it here to treat individuals that might be mentall ill?

MS. SILVERMAN: Objection to the questions.

MR. GOETTEL: Sustained as to his interpretation of the law. You may ask him, if you wish, as head of psychiatry and deputy director, what he understands his function to be.

Q As deputy director of psychiatry, what do you understand the purpose of Matteawan to be? What kinds of patients do you believe should be treated here?

A Well, I think we have to come at it in a sense from the negative side of it. If I haven't got enough evidence to come into this court or into court here which is held once and sometimes twice a month and I haven't got evidence enough to retain this man, then I have no business retaining him obviously.

So that, in a sense, mental illness which is showing progress and has need of further progress would be every reason, of course, to retain the man.

An illness which has responded to treatment and has abated or completely disappeared, of course, would be every reason for discharge.

There are certain conditions which do not respond to treatment. This, of course, poses a bit of a dilemma. As I mentioned before, the more common -- an example of that would be a psychopathic personality with psychosis.

Now, you may get rid of the psychosis, but you've still got the psychopathic personality, but there's no treatment for that. So, of course, you would not retain the man.

Q Do you feel that there are some individuals who are not psychotic but are mentally ill and are responding to treatment should be here?

A Well, mental illness has about sixty-four definitions depending on who you're talking about. I don't think I can answer that question simply because there are no ill-defined -- there are no definitely defined margins of mental illness.

Somebody who is constantly digging in his ear might excite an analyst. There are many hallucinatory patients right in the subways of New York. You see them talking to the ceiling. They are harmless. They are not marginally adjusted outside. They certainly don't require hospitalization.

As you know, of course, the state is on the open-door kick and a community treatment kick. Perhaps I'm having gone a bit too far.

Q My question is basically this. In your opinion, should someone be psychotic to be at Matteawan? Are there individuals who are not psychotic but should be here to benefit from treatment plans?

A I would say in the main, they should be psychotic, suicidal, markedly disturbed and so forth. However, if a man has a severe neurosis that is making it impossible for him to operate in any other society and he can operate in this sociey, fine.

I think that's appropriate that he be sent here. Now, then you get into the nitty gritty decision of when is this guy better because he's always going to have that trait and this is where the crux is.

Q How would you define an individual who is unable to operate in another environment, let's say a prison environment?

A Well, we have several lads here who have really -- in technical terminology, would be poor frustration control. Really what it amounts to is a short fuse.

Every time they turn around and somebody says no to them, they knock out a window or punch the other guy in the mouth and so on.

Now, there's nothing psychotic about that. I don't think you can make a diagnosis of anything other than poor control, bad judgement, perhaps.

I talked with one of the lads the other night when I was on duty and I said, "Kevin, we discussed this very issue and I asked you for the love of Mike don't pop everybody every time you don't get what you want."

Then I turned around to him and I said, "Why don't you keep your hands in your pocket." He turned around to me and he said, "I didn't have any pants on."

This is the sort of personality you're dealing with. I don't know that we have any answers of people like that, really. He's certainly not certifiable to a civil hospital out in the street.

Q Doctor Sweeney, I understand that you are responsible for the treatment of about 300 patients at Matteawan, is that correct, you and your staff?

A Well, I am responsible for some control and supervision over six or five of the psychiatrists who are responsible for Matteawan.

Q How many patients does each of those five psychiatrists see? How many patients are each of those psychiatrists responsible for?

A You mean how many are they responsible for?

Q Right.

A Well, the wards are getting crowded again, so some of them holding forty apiece. The man would be responsible for eighty.

Now, Doctor Factora has the acting-out and the admitting wards. The admitting ward is only twenty-eight and the acting-out is nineteen. So that's considerably less than eighty.

Q How often, and I understand the system is changing now, but how often in the past would a psychiatrist see a patient for an evaluation?

MR. GOETTEL: Miss Bloom, I think we better confine ourselves to the period immediately prior to this suit. I have had a good deal of difficulty following the testimony as it is because of the continual changing of policies.

Let's direct our questions to, let us say, the summer of 1975 through the fall of 1975.

Q From the summer of 1975 to the fall of 1975, on the average, how often would a psychiatrist see a patient?

A In evaluation?

Q Yes.

A Every four to six weeks.

Q Who would initiate the evaluation? Who would set up the evaluation schedule?

A Routine, it comes around on the wheel, a cardex, a roledex and there is a clerk whose primary function is that. She has many other duties, too, but she sets this thing up.

Q Would the psychiatrist ever have the occasion to see a patient for an evaluation at a time other than a time scheduled?

A Certainly.

Q What would be that kind of occasion?

A I or any other psychiatrist think that a particular patient is doing very well, his last evaluation was four weeks ago and he's not due for another two or three weeks, let's get with it, let's get on to it.

The patient might write his ward doctor or me and say, "I feel I've got it together. I want to get out of here, please see me on 21."

We also periodically by concensus formulate lists. We haven't had a list in the -- it must be four or five months. I would say during the latter part of '74, earlier part of '75, we might make up a list every three or four months in terms of who are the guys on which wards that seem to be doing very well.

In particular, shouldn't they be put ahead of the line a little bit on the rotating thing so that if they're ready to go, let's get them out of here, rather than to have them wait an unnecessary extra two or three or four weeks.

That information would come from many

sources; nurses, officers, psychology, social worker, doctor.

Q Let's say that a psychiatrist is seeing a patient every six weeks and the psychiatrist was responsible for seeing or supervising 80 patients. That means that the psychiatrist is going to see about thirteen or so patients a week for an evaluation, is that correct?

A Different doctors work it at different paces, so I can't just flatly answer you. One of the reasons I wanted the doctor on the ward to see the patients was that he is much more conversive with that patient than he's going to be with some chap from some other ward so that a longitudinal or progressive series of interviews are going to take place that are closely related because they're coming out of the same person who really knows this patient.

I guess I didn't answer your question.

Q Will a doctor see maybe thirteen to fifteen patients a week normally for an evaluation?

A Yes. Now, Doctor Factora, because he has admitting and the acting-out ward may only see two a day five days a week.

Somebody else may see five a day being they're both morning and afternoon.

Q What would be the average length of an interview for an evaluation?

A Well, again, it would vary, but I'd say certainly until you go through the man's record, until you get his ward charts and his notes and find the information from the nurse or officer or so on, that, in and of itself, is certainly going to take ten or fifteen minutes.

Then the interview of the patient himself certainly wouldn't be less than ten and much more likely twenty minutes.

Q Would there be a follow-up notation made?

A A dictation is made immediately.

Q How long would that take?

A I can't recall. I don't think it takes -- it depends on how much you're going to say about the man obviously. If it's a relatively new case and you're reviewing everything, what his crime was, what his CR date is, what his maximum expiration date is, when he was last seen by parole, when he first had a retention order and so forth, you're going to be ten minutes dictating.

You might be three minutes dictating.

Q Would you say on an average, a psychiatrist would spend about forty minutes, combining, reviewing the record, interviewing the patient and making a notation?

A I'd say it would be twenty to forty minutes easily, yes.

Q Would you say on an average then a psychiatrist is spending a good ten to fifteen hours per week doing evaluations of patients? Is that accurate?

A Yes, I would say that, yes.

Q What particular documents are consulted by a psychiatrist before speaking with the patient?

A Well, the blue book which is these charts which you are familiar with containing his commitment papers, arrest record, so on and so forth, his inherative summary following admission, narrative summary following admission, his evaluation sheets.

If there are any sizable disturbances, use of force forms, they're incorporated in there. Minor misperformances would be probably in his ward notes.

That is the loose material that's kept on the ward itself. That might be written by an officer, it might be written by an officer, a social worker, he had an argument with Joe Jones over a pack of cigarettes or something like that.

Q Would changes of medication also occur at the end of the evaluation?

A They may and they may not. I would feel that changes in medication are much more likely to take place on the ward during morning rounds.

One reason I meet at eight-thirty with the doctors is first to find out what happened last night from the OD and information, whose ever patient it is, that your patient got into that problem or needed a change of medication or he wants to see a surgeon or whatever.

The second thing is to discuss any issues that are of instant import and then, thirdly, we all disperse to our wards.

Q In your opinion, when an individual's patient medication is increased, does that mean that the individual is more disturbed than the individual had been before?

A It might not mean so much that he's disturbed, but that you're getting a good result, but it isn't moving as fast as it might, as you'd like it to.

It might also mean that the patient himself has come to you and said, "Look, I feel considerably better, but I'm still pretty tense and tight. Could I have a little more," and they will do that.

Q Would it usually mean that an individual is in need of further treatment at Matteawan?

A Again, that would depend on what the medication is. Very often, a patient is on nothing all day, but he's on something for sleep and let's say approach to some change is coming up, where he's going out to an outside hospital for an operation or going back to prison and so forth.

He may become a little more insomniac and require a little more medication. Don't forget that these people don't really get an awful lot of exercise and while I am basically against sleeping pills, I think in the confined area, I'm perfectly happy to furnish assistance in this area.

I will not use sleeping pills. We use sparine which is a great tension disperser and it's fluid and it can't be traded and carted around and bartered.

Q You testified earlier that an individual would be placed on Ward 2, I believe, if an individual was put in the restraining sheet.

Would an individual normally be put in a restraining sheet if that individual was in need of further treatment of some sort at Matteawan?

Would that be one indication that the individual was in need of further treatment?

A Well, I don't think you put a patient in restraint because he needs further treatment. Restraint has some pretty specific indications and if the man is completely out of control and may hurt himself or hurt somebody else, that's your primary indication for sheet restraint.

Obviously, he needs further treatment, of course. Really what your sheet restraint amounts to is to keep control of the man until you can get something else going for him that's less vigorous; that is to say, more appropriate medication so that he can be up and around and doesn't have to be restrained.

Q I want to ask you some questions regarding materials that you testified to earlier and then I want to ask you some question regarding specific patients.

You testified that someone can be admitted directly from prison to Matteawan by court order, 2 PC court order?

A That's our 408, same thing as a 2PC, except it's court ordered.

Q Would someone typically be more disturbed or more ill if that kind of commitment was used as opposed to sending someone to D & E and then to Matteawan?

A Well, in the ideal, of course, the frank psychotic, if all things were the way we'd like them, would come in as a 408.

D & E ideally would be for puzzling cases where the prison health services can't make up their mind whether this is something that should be managed in prison or just requires a different program or whether this guy really is suitable for 408.

Now, actually, of course, there are many practical factors that interfere with that. The most obvious -- the one that it's very difficult to obtain two psychiatrists in some areas in New York State and they would very often send us very sick guys right to D & E, simply because they cannot hold the man for the length of time it's going to take them to get two outside physicians and a judge and get it all accomplished.

We accept that. That's understandable.

Q On the average, someone who is directly committed to Matteawan would be sicker than someone who is committed through D & E, is that correct?

MS. SILVERMAN: Objection.

MR. GOETTEL: On what grounds?

MS. SILVERMAN: On the average. I don't know what averages have to do with the five plaintiffs in this case.

MS. BLOOM: I'm asking Doctor Sweeney's experience.

MR. GOETTEL: I don't understand what how they come in has to do with how they go out.

MS. BLOOM: It's an indication of what the state of the individual is when they come back after they have been transferred out.

MR. GOETTEL: You are trying to establish that the sicker cases, that the more borderline cases normally come in through D & E?

MS. BLOOM: Yes.

MR. GOETTEL: All right. For whatever value that may have, tell us, doctor, whether, on the average or in the main, the patients who come into D & E are as bad off as those who come in on direct commitment.

A I can't answer it in a flat way. There are times when obviously the most sick individuals come in as 408's. The questionable ones come in as D & E.

At this particular moment, we have had a tremendous influx into D & E and they are all very sick guys. So here again, it's the mechanics of what they're able to do in the other institutions rather than the condition of the patient.

Q You testified on direct examination when you were describing the setup in Ward 3, you indicated that some individuals were placed there because they would steal cigarettes from other individuals and you put them there so they wouldn't get pounded upon by the other inmates and you said this prevented them from being shipped back and forth.

Can you clarify that?

A You put two things together that aren't related, necessarily. Go ahead, finish your question.

Q I'm asking you to clarify what you meant by that phrase.

A I'm talking about two different things. First, I'm talking about one reason you might send a man to seclusion is that he cannot adapt to population and he's irritating and annoying the rest of the inmates or patients who are relatively well behaved and they're just not going to tolerate this because their tolerance is pretty low anyway.

So you might put them in seclusion until you get your medication working well enough to get better control of him so he can adapt to population.

Now, what I was saying about census patients, if we might decide that the only thing to do with a certain guy is to keep him on the seclusion ward but not as a visitor with his door shut, but as a census patient because he has gone back and forth, back and forth over a period of days and obviously we need some time to get his medication regulated so he can tolerate population and not be going back and forth.

Q You testified on direct examination that, in your opinion, certain inmates preferred to stay at Matteawan as opposed to going back to prison because there were certain advantages as far as visiting and open wards and the like at Matteawan.

A Correct.

Q In your experience at Matteawan, have you known of any inmate that was paroled from Matteawan?

A None of the ones that I had on my ward at that time. At this point in time, I have appeared before the parole board in a couple of very deserving cases that have unusual factors.

One man has served twenty-six out of a thirty-year sentence. He's perfectly harmless. He was arrested at nineteen. He is a sick man, but he's regressed.

Q Was he granted parole?

A It's still under consideration. He comes up this first part of February.

Q Do you know of anyone that has been paroled from Matteawan?

A I don't know, no.

Q In your experience dealing with the Correctional Department as a whole, is it your understanding that most individuals are paroled before they reach their CR date?

MS. SILVERMAN: Objection.

A I have no experience with that.

MR. GOETTEL: On what grounds?

MS. SILVERMAN: Doctor Sweeney is not a member of the parole board. As far as I know, he hasn't read statistics.

MR. GOETTEL: I think he's capable of telling us if he's unable to answer that question. In fact, I think he was about to do that.

A I have no experience in that area. I have sent men out of here deliberately.

Q Deliberately?

A With their concurrence and because they were much better to a prison so that when they hit the parole board, they weren't in Matteawan.

Q So that it is your understanding that it is to someone's disadvantage to be in Matteawan when they go before the parole board?

MS. SILVERMAN: Objection.

MR. GOETTEL: That calls for a conclusion and beyond his competence. I think you can argue the facts. You can argue the conclusion from the facts presented.

Q Do individuals normally stay at Matteawan until their CR date? Is that a typical pattern?

A I don't hink you can say that because obviously you have patients that we send back long before their CR.

Q The ones that are sent back.

MS. SILVERMAN: Objection. I don't understand that question.

Q The question is do most individuals stay at Matteawan until their conditional release date or until they are returned back to prison?

A Well, obviously. There's no other way that it could be. You either stay here until their CR or their discharge.

MS. SILVERMAN: Does the court understand what a CR date is?

MR. GOETTEL: I think that means the maximum period of sentence.

MS. SILVERMAN: Less good time.

MS. BLOOM: Conditional release.

THE WITNESS: Conditional release as opposed to maximum expiration.

MS. SILVERMAN: Your maximum expiration date, just for the record, is when your maximum term as fixed by the court would expire.

Conditional release date is your maximum date as fixed by the court when you were sentenced less any good time credit you have accrued.

Normally, an inmate accrues, I believe, ten days a month. So it turns out to be about one-third off his maximum expiration date.

MR. GOETTEL: Normally, prisoners

are considered for parole in the New York system when they serve one-third of their sentence?

MS. SILVERMAN: No, that's under the old penal law. When they serve two-thirds of their minimum, they were eligible for parole. The new law is somewhat more complicated.

If no minimum is set in most cases, then you meet the parole board about the tenth month and they set the minimum date.

If the court sets a minimum date, then that is the date you meet the parole board. Under the new penal law, the system was given more flexibility and loosened up in effect to favor parole, as I said, unless the court specifies a minimum.

Then you would meet the parole board who would set a minimum date for you the tenth month and then you would meet the board again at that date unless they determine to release you at that time.

MR. GOETTEL: Off the record.

(Whereupon, an off the record discussion took place.)

Q Doctor Sweeney, are patients at Matteawan eligible for furloughs?

A No.

Q You indicated that the disciplinary rules are not applicable to Matteawan?

A That's correct.

Q What happens if someone misbehaves and gets into a fight? Are they punished in any way?

A There's no punishment. Misbehavior or whatever you want to call it in a patient is a manifestation of his illness.

You're certainly not going to punish him. I mean, just, for instance, let me diverge a moment on D & E, a discretionary decision has to be made.

Here are individuals who are technically inmates, but if the guy is really sick, we're not going to put him in special housing because he stole somebody's cigarettes when obviously he doesn't know what he's doing.

He will be treated as a patient even though legally he's still an inmate. So that in D & E, you have a limbo situation which sometimes is very confusing to our officers, of course.

Sometimes it's confusing to doctors which way to go.

Q Now, focusing on Matthew Gully, you indicated that, in your opinion, Mr. Gully's only mental problem was caused by his use of alcohol.

A That's correct.

Q And that other than that, he was in good mental condition?

A That's correct.

Q Is it your opinion that from the time he entered Matteawan until the present, this is the case?

A Let's say as long as I have known him.

Q How long is that?

A It's going to be around two years. Let me amend that. It will be about a year, a year and a quarter that I have known him intimately.

Q So you have known him basically since the beginning of 1975, is that correct?

A Yes, you could even take it back to, say, the fall of '74.

Q Have you reviewed the State's Exhibit B regarding Matthew Gully, his clinical summary?

A Yes.

Q Are you familiar with the periodic evaluations that are noted here?

A Yes.

Q Would you disagree with the evaluation of Doctor Feldman of February 11th, 1975?

A I certainly agree with the last sentence. "He shows no gross psychotic symptoms."

Q Would you disagree with his conclusion to retain him?

A Yes. That was February '75.

Q Now, at this time, were you deputy director of psychiatry?

A Yes.

Q It was your function to approve all decisions that were made?

A That is correct.

Q Would you normally approve a periodic evaluation?

A No. Only when it results in discharge, but I was aware of that one and spoke with him about it. He persuaded me that he felt that Matthew could profit by further retention, and I said all right, leave it alone for now.

I personally would have sent him out.

Q On February 14th, 1975, there is a notation here made by Doctor Schaeffer. I would like to know if the notation concludes "accordingly the patient be placed in sheet restraint and suicidal watch though not because he is thought to generally harm his life nor because he is depressed which he is not, nor because he suffers from any acute mental illness."

Would you agree with that statement?

MS. SILVERMAN: May I have the date?

MS. BLOOM: February 14th, 1975.

A Well, I think again it's taken out of context. "Today it was considered an effort to return to an open ward. He threatened suicide and the destruction of his room in Ward 3. The desire to impress us with a suicidal tendancy could be dangerous to the patient, no matter how much they lack genuineness, nor is the destruction of property to be desired.

"Accordingly, the patient will be placed in sheet restrain and suicidal watch, though not because he is thought to generally harm his life nor because he is depressed, which he is not, nor because he suffers from any acute mental illness."

It's to keep him from taking the place apart or hurting himself accidentally.

Q In your opinion, he should not have been retained at Matteawan at that point?

A Well, I think at that specific point, something had to be done to keep him from hurting himself.

Just recently, he smashed his hand against the wall. I was on that night and took care of him. He's been over there in that transfer unit for what, two months now, or longer. No program, nothing.

Q Reviewing this record, how long was Mr. Gully -- you certified Mr. Gully to return to prison February 13th, 1975. Had he been involved in many fights prior to that interview?

A No, not many. Not in this place, let's put it that way. I only remember three specific altercations. First of which wasn't Mat's fault at all. Another patient assaulted him.

Q When would this have occurred, do you remember?

A Yes, that would be about October or November of '74. The next time he was in difficulties was a patient got upset and started to run up and down the ward.

I think he smashed the T.V. set. Some of the officers and one or two of the patients got hold of the patient and tried to hold him down.

Then the next thing everybody got going

and everybody lost sight of what was going on and in the midst of the confusion, Mat got in a few good punches to officers.

Q When would this have occurred?

A Well, that was, I think June of this year. I'm trying to think of the third fight.

Q Were there any other fights that you remember prior to February 1975?

A Well, yes, I mentioned the one in the fall.

Q Other than that.

A I don't think so. There are some sheets of difficulties here and there, but nothing of any magnitude.

Q On October 17th, 1975, do you remember whether or not Matthew Gully was involved in a disturbance?

A It's been brought to my attention. I wasn't present.

Q Have you reviewed reports regarding that incident?

A Yes.

Q Can you describe from reading those reports --

A Not without the reports.

Q Do you have those reports with you?

MR. GOETTEL: What is the date of this?

MS. BLOOM: October 17, 1975.

(Whereupon, a short recess was taken)

A October 17, I don't see nothing in here on that issue. You should have the reports there.

Q This is a "Use of Physical Force" form. This is dated October 17th, 1975. Why don't you briefly review all four pages.

(Handing document to witness)

A Yes, this is the incident I spoke to you about where one of the patients went beserk. He had a mop ringer in his hand. He was running up and down the hall.

Everybody tried to be of some help, but actually then it turned into a bit of a malay and I believe he was considered to have gotten a few good shots.

I wasn't there at the time. I was giving exams in Albany.

MS. BLOOM: I would like to mark these four pages as Plaintiff's Exhibit 1.

(Whereupon, the abovementioned document was so marked as Plaintiff's Exhibit #1.)

MS. BLOOM: I would like to introduce this into evidence.

Q Doctor Sweeney, you have reviewed this "Use of Physical Force" form, correct?

A Yes.

Q It indicates on page number three that as a result of this incident, Mr. Gully was placed in seclusion for a period of twenty-four hours, is that correct?

A Mm-mmm.

Q And that he was also placed in the restraint for one day, is that correct?

A Mm-mmm. One of the dates of those two different events -- did they all take place in the same day?

Q This report is dated October 17th.

A Seclusion is which date?

Q Everything is dated October 17th.

A All the same day.

Q Now, in Mr. Gully's clinical record, there is an indication that periodic evaluation took place on October 9th, 1975, is that correct?

A Correct.

Q Would you review that and indicate to me whether or not you would agree with the finding of Doctor Factora?

A Yes.

Q You would agree with thatfinding?

A Well, I agree with everything except the retention.

Q You would not agree that he should have been retained?

A No, that's why another review was held on October 20th.

Q Did you discuss this, your disagreement with Doctor Factora?

A Yes.

Q What did you indicate to him?

A Well, I was very unhappy about this part of it. "During the interview, he expressed strong objections to returning to prison because he seems frightened and fearful of the officers in the prison and he said they might kill him.

"'Every time I go into the dining room in the prison, they tell me they'll kill me. I don't want my life to be in danger. I'd rather stay here.' He absolutely prefers to remain in the hospital."

Now, I am unhappy with that because that's the patient's desire.

That's got nothing to do with a medical judgement. He goes on to say, "He's oriented in all spheres, no evidence of memory impairment, hallucinations or delusions. His mood showed no depression. Attention span was good, verbal and thought production is moderate."

I got in touch with Doctor Factora and said, "You know, you've written up a normal human being. What do you mean retain?"

Q Did you disagree with his statements that "Judgement and insight were inadequate. In my opinion, he should remain here because of his unpredicatable behavior. He has poor impulsivity and fear of prison."

A Isn't that characteristic of everybody that's in prison, poor insight and judgement? Impulsivity.

Q You disagree with Doctor Factora's finding?

A That point, certainly. You'd have everybody in the prison system in Matteawan on that basis.

MS. SILVERMAN: I'm going to object to the question. I don't think it's a question of whether he disagreed with what Doctor Factora said or not.

I think it's more a question of

whether he wanted to retain him or not. Isn't that really the point?

MR. GOETTEL: Maybe, but the question has already been answered.

Q When did you discuss this with Doctor Factora?

A I was away the entire week of the 20th through the 25th, so I imagine this came to my attention the following Monday or Tuesday.

Q This is dated October 9th.

A You're right. No, after reading this, I got in touch with him. I don't know when that might have been, but obviously I told him I was unhappy about it and to reconsider it since he had written the man up as being essentially normal.

Then I was not here on the 17th through the 25th. This took place on the 20th which was a Monday and he was also seen by a complex; that is to say, all the six other psychiatrists and they concurred in this writeup of October 20th.

Q Do you normally review all periodic evaluations done of patients at Matteawan?

A Not all. Well, yes I do. Every one of them comes across my desk, yes.

Q Do they all come across your desk?

A Yes.

Q So that you will normally review, in a week -- how many would you normally review in a week?

A If they see the patient on a Monday, it's probably typed and into our building by Tuesday and probably on my desk at the latest by Wednesday because it's hand carried to me awaiting my signature and it doesn't stay there very long.

I've got to look at that and get it moving whichever way it's going.

Q We calculated earlier that each doctor would evaluate about thirteen to fifteen patients a week and there are --

A Well, I explained why Factora doesn't and Chakir doesn't and, of course, Sirman has D & E, so he has nothing to do with this.

Q How many of these --

A He doesn't any more. He used to.

Q About how many of these do you see a week?

A I'd say Mary Ardima (phonetic) who's the clerk in charge of this material may put five or two or six of these on my desk. Now, Doctor Wright is doing this.

Q Five or six on your desk each day?

A Two to six a day.

Q That would be about twenty a week?

A Yes.

Q You stated earlier that there are some doctors who will do as many as thirteen evaluations a week, is that correct?

A I calculate that, yes.

Q And there are a few that will do four?

A That's right. They only do about ten a week.

Q So that there are more than twenty evaluations that are done each week at Matteawan, is that correct?

A Yes.

Q Do all of these pass through your desk?

A Yes, until Doctor Wright took over which is about three or four weeks ago.

Q If only twenty pass through your desk and maybe a hundred or a hundred-fifty are done a week, can you explain --

A How many a week?

Q We calculated that at least three of the doctors are doing thirteen a week and three of the others are doing --

A I can make a phone call and tell you how many are done a week.

MR. GOETTEL: It may be that you are talking about different things. We have something in excess of 300 patients and we're told they were being evaluated about every six weeks.

That would be fifty evaluations roughly a week. I would gather that only a small percentage of these result in recommendations for decertification and return to prison.

Do you, Doctor, stop and review every evaluation or only those that have recommended a decertification?

THE WITNESS: No. I see the retentions too. This is a retention, and I immediately brought it to the doctor's attention at least within the next day or two and said, "You know, you're writing up a perfectly normal individual and then you recommend retain. What does that mean? Please reconsider."

Q Did you have personal discussion with Mr. Gully prior to that evaluation?

A No, I don't believe so.

Q You based your judgement mainly, basically, on the evaluation as you saw it written?

A Well, I saw a contradiction in the evaluation, yes. I thought that should be rectified. These things have to be defended in court and that's exactly the point.

There's a contradiction in there. Somebody's got to explain it.

Q Did you have any contact with Matthew Gully on October 17th, 1975?

A I don't recall, frankly, barrister. I cannot separate the two events. This sort of thing happens frequently and if it gets at all heavy, I'm called in. I remember on one occasion, I don't know whether it's this or another incident, as I described, Mat had apparently popped a couple officers.

I got into the first part of it where we got the lad who was very sick out of the way and then I went back and talked with him, and I had to persuade Mat.

I said, "Look, Mat, you were seen hitting officers and --" but I don't know whether that was the 17th or another occasion.

Q You reviewed the Use of Force form and it does indicate that Mr. Gully was placed in restraint for one day?

A Yes, which suggests to me -- well, of course, there were two or three doctors at the time present because what I was going to say was ordinarily having persuaded Mat to go to three peacably, I would have signed the paperwork. Apparently, I didn't. Somebody else did.

Q Does the fact that he was placed in restraint indicate that his insight and judgement had improved or had worsened?

A No. This is exactly the same thing that you quoted before from Mr. Shaeffer wherein many of the lads, when you put them in seclusion, feel that seclusion is something they don't go for.

They will threaten to cut up or they'll jam the door or plug the toilet because then they know we have no recourse but to put them up on two in sheet restraint.

You might say, well, what's the preference between being in a locked room as opposed to being tied down in a bed. Strangely enough, Ward 2 is sort of a sociable place. One, it's an open ward. Two, sick call goes through there. Communication between those members in sheet restraint and other circulating people is not restricted and some of them seem to prefer that operation to seclusion.

Q So you are telling us that some individuals would prefer to be in restraint as opposed to be on the open ward?

MS. SILVERMAN: No, Ward 3.

A No, as to being in seclusion ward.

Q Why was he originally placed in seclusion, because he misbehaved in some way?

A Because of the fight.

Q Would his involvement in the fight have meant that his judgement and insight were better or worse or would it have meant anything regarding his mental condition?

MS. SILVERMAN: I object to that question. Doctor Sweeney testified that he was not at the institution when this occurred. I believe that was his earlier testimony, so I don't think it's fair to ask him that question.

MR. GOETTEL: Will you read me the

question again?

(Whereupon, the last question was repeated by the reporter.)

MR. GOETTEL: He's being asked a professional opinion. It could even have been termed hypothetically. We appreciate the doctor was not present.

A I don't think this would have indicated anything knowing Mat. Mat is not unaccustomed to settling matters with his fist. He is an ex-boxer and this wouldn't throw any light one way or the other in my judgement.

When provoked, he's going to swing out.

Q Drawing your attention to the evaluation that was done on October 20th, 1975, it appears in many respects to me to be identical to that evaluation that was done on October 9th.

MS. SILVERMAN: I move to strike that comment.

MR. GOETTEL: Yes.

MS. BLOOM: I withdraw it.

Q One section of this periodic evaluation I would like you to comment upon, and I will read it to you.

It is stated, "He expressed no suicidal

or homicidal ideations (phonetic). His intellectual function is normal. His judgement and insight were inadequate. The patient was last evaluated on October 9th, 1975.

"Since then, his condition seems to be the same except on one occasion, he was involved in an unpleasant incident."

Can you comment on the meaning of that statement?

A The meaning of what statement?

MS. SILVERMAN: I think the meaning, the statement has to be read in its entirety.

MS. BLOOM: I would like Doctor Sweeney to comment on that aspect of the evaluation in the context of the entire evaluation.

Q My question is the writer seems to be saying that the patient is in the same condition that he was in on October 9th except that he was involved in an unpleasant incident and we don't know if that's referring to October 17th or not.

A You're not relating October 9th to October 20th. I would agree that the patient is in the same state. That's exactly why a re-evaluation was done, because I was dissatisfied with the evaluation on the first place on October 9th.

Namely, that he described a perfectly normal person and then says retain. Here, he redescribes a normal patient and certifies him to prison which is what should have happened on October 9th.

There's no discrepancy there.

MR. GOETTEL: Doctor, before you leave that, I do notice at the bottom, Doctor Factora lists as a prognosis, "guarded," and a final diagnosis, "borderline mental retardation, personality disorder."

I would not take it that that is a description of a normal person. Is what you're saying --

THE WITNESS: I can't keep a man in Matteawan if he's retarded on that basis. A personality disorder would fit everybody in prison and a lot of others, perhaps even myself.

So neither one of those things qualifies him for Matteawan.

MR. GOETTEL: What you're saying when you use the word "normal", is that the range of his mental difficulties are not abnormal for persons within the prison system?

THE WITNESS: That's correct, sir.

MS. SILVERMAN: May I ask Your Honor where were you reading from?

MR. GOETTEL: The recommendation at the bottom.

Q The evaluation on October 9th, 1975, indicates that Mr. Gully's medication level was -- he was being given sparine (phonetic) a hundred milligrams TID.

A Three times a day.

Q And October 20th, 1975, the medication, his present medication is sparine a hundred milligrams three times a day and sparine two hundred milligrams HS.

A Hour of sleep.

MR. GOETTEL: I think, for the record, we ought to find out what sparine is. I have never heard the word before.

THE WITNESS: It's a tension disperser. It is chemically related to thorazine, but it is not, in my experience and most other people's, very useful in psychotic patients which thorazine is effective.

Sparine, although related chemically and only having an extra chain on the side is a great tension disperser,

Golf pros use it in lesser doses to keep the clutch out of their putting. They may be taking five, ten or twenty-five milligrams three or four times a day.

I don't recommend that, but that's not my business. A hundred milligrams TID is utilized around here pretty freely because it makes it easier for these fellows to put up with life.

You've got forty men on the ward and they're tripping all over each other and when we get up to forty, it's kind of crowded.

They get in the dining room and there's pushing and shoving and there's some discrepancy over whether I got a full ladel of soup or I only got half a ladel and so on.

These people have nothing else to do but get involved in miniscule combat verbally or otherwise.

MR. GOETTEL: Does the drug have a tranquilizing effect?

THE WITNESS: Yes, that's what I meant by tension disperser as opposed to a specific, like thorazine which is really specific for a psychotic.

MR. GOETTEL: Does it promote sleep except for the relief of tensions?

THE WITNESS: It is not a sedative in the true sense of the word, no, sir. It primarily relaxes tension.

As a matter of fact, you can use it on sprained necks and sprained backs.

MR. GOETTEL: In other words, it will promote sleep for someone whose difficult in sleeping is caused by tension, but it will not promote sleep for someone whose problems are other than tension?

THE WITNESS: Well, of course, the greatest cause of insomnia is tension. Pain, that's another matter. There again, you see, there is a seeming contradiction in that sparine is a good muscle relaxer, too.

BY MS. BLOOM:

Q So, Mr. Gully's medication level was increased as of October 20th, 1975, is that correct?

A No, I think what has happened is it was increased somewhere in the interim and it is commented on as it should be in the evaluation as to what the medication is that the patient is on presently.

Because, on discharge to another institution, that advice, that sheet, a copy of that, goes with him.

Q Then there was a recommendation that his medication be increased, is that what you're saying? Is that what this meant?

A Somewhere, it was increased before the 20th and after the 9th. He may have asked that he was having trouble sleeping.

Q Turning now to George Dunleavy, you indicated that you had an interview with Mr. Dunleavy in April of 1975, is that correct?

A Yes. You are referring to the amytal interviews?

Q That's right.

A Yes.

Q What was your purpose in conducting those interviews?

A George's physician called me up and he, via some other attorney whose name I don't believe I ever did know, felt that George had a case in Suffolk County.

As you know, he was accused of shooting a police officer or shooting at him and what George and the physician, psychiatrist, were trying to clarify was that on the witness stand, he had told the situation just as he recalled it.

Apparently, the opposition was raising the issue of whether or not he wasn't conveniently leaving out certain details.

Under the first amytal interview, I felt that he was still pretty light. However, there were no discrepancies in his story.

The second time around, I felt I got him quite deep and that the story jived item for item. Now, a copy of that report was forwarded to his psychiatrist.

I don't know what's happened to the situation legally. I don't even know whether it ever got retried or what.

Q Was your purpose in conducting that interview then to conduct this test?

MS. SILVERMAN: What test?

Q The sodium amytal test.

A The test and the interview are the same thing.

Q Was your purpose in conducting this interview to evaluate his mental condition at that time?

A I think that would certainly be a secondary purpose, but the primary purpose was to discover whether there was a discrepancy between what he consciously recalled and what his unconscious recalled.

This was done primarily at his psychiatrist's request and to serve the patient if it would be of any help to him in court, fine.

Q Did you conclude at the end of that interview that Mr. Dunleavy had recovered and should be returned to prison?

A No, I don't think that was part of my purpose at all. My purpose was to see if there was a discrepancy. I found no discrepancy except one minor thing that I forget just what it was, but it wasn't important.

That had nothing to do with whether he

stayed here or went anywhere else.

Q Shortly after that interview, which was given on Monday of March 31st and Wednesday April 2nd, 1975, you conducted periodic evaluation of Mr. Dunleavy, is that correct?

A Let me look at the record and see if it's correct.

You are talking about what date?

Q I am talking about the periodic evaluation done on April 23rd, 1975.

A That was done by Doctor Feldman.

Q It says "approved." Is that your name?

A Yes, approved by, but it was conducted by Doctor Feldman. That isn't what you said.

Q So you didn't speak to Mr. Dunleavy before he was returned to Greenhaven?

A No.

Q Did you review this evaluation?

A Yes. I won't have approved it if I hadn't read it.

Q You agreed with the recommendation?

A Well, I think everything I knew about George indicated that he was certainly in control of himself. He was a pretty intelligent guy. He's very articulate.

Q Were there any other individuals that had been involved in the alleged escape that Mr. Dunleavy was allegedly involved in in March of 1975 given a periodic evaluation the same time he was?

Do you know that?

A I wouldn't know that.

Q You wouldn't know whether or not Cortez, Franco and Trongoni (phonetic) were evaluated the same time he was?

A I wouldn't know, but I can find out.

Q Were they allegedly involved in the alleged escape?

A Trongoni went off on his own hook. He had a family problem. He had nothing to do with this problem.

Q Were Cortez and --

A Cortez and Franco were, I believe, on the same ward with George Dunleavy. I think that was Ward 11. They engineered the escape through the floor.

Q Were they evaluated --

A I couldn't tell you.

Q You could check though?

A Yes.

Q Were they returned to prison about the same time that Mr. Dunleavy was?

A I couldn't tell you that either without looking at the record. I would assume that if an individual carries out an escape and manages thing in pretty sound order that certainly would raise one's suspicions about his need for a hospital.

That is not to say that people don't escape from hospital, too, but --

Q You will say that would be an indication that they were capable --

A It certainly raises a question in your mind, certainly.

Q Just going back to Matthew Gully for one moment, were you at all involved in the evaluation that was done on Mr. Gully on October 20th?

Were you present or were you in the institution when that was done?

A No, I told you I was in Albany during that week.

Q You indicated that five or six psychiatrists interviewed him as opposed to one.

A That's right.

Q Is there any reason why --

A You would have to ask them. They cooked that one up on their own.

Q Would it be typical for six doctors to evaluate --

A No, not typical, but I think if they felt that there was an issue here that somebody was going to contest, then certainly a concensus opinion is going to carry more weight than one isolated physician's opinion.

Q Was there any reason why they should feel that someone was going to contest Mr. Gully's transfer?

A I don't know. You'll have to ask them.

Q Have you spoken with them about where they interviewed Mr. Gully or the kinds of questions they asked him?

A I know after the fact that they saw him, I believe, on Ward 3. He was not seen on 21 if that's what you're getting at. Everybody isn't seen on 21.

Q Did youhave any discussions with them as to where Mr. Gully was when he was interviewed? Was he sitting in a chair?

A No. Why? Why would I?

Q I'm just asking.

The one other thing that I would like to ask you about is Carmine Perrelli. Do you have Mr. Perrelli's records with you, Doctor Sweeney?

A I don't believe so. Let me look and check. I don't think Perrelli was considered as being part of this.

No.

MR. GOETTEL: Mr. Perrelli is one of the three original plaintiffs?

MS. BLOOM: That's right. He didn't testify.

I would like to mark for identification clinical evaluations of Mr. Perrelli. This was provided to me by Miss Silverman, by the attorney general.

(Whereupon, the abovementioned document was marked as Plaintiff's Exhibit #1 for identification.)

MS. SILVERMAN: I have no objection.

MS. BLOOM: I introduce it into evidence.

MR. GOETTEL: It will be received.

(Whereupon, the abovementioned document was marked into evidence.)

Q Doctor Sweeney, would you review for me the periodic evaluation that you did on April 21st, 1975 on

Mr. Perrelli.

A Yes. What about it?

Q Did you speak with Mr. Perrelli prior to writing this evaluation?

A Yes.

Q Where did you speak to him?

A On the ward, not on 21.

Q Did he know that this was considered an evaluation of him?

A I doubt it, and obviously there was a misunderstanding about which I was very unhappy.

MS. SILVERMAN: Could I have the date which you just --

MS. BLOOM: April 21st, 1975.

A The purpose, first -- the evaluation stands on its own merit. The man was in excellent condition in all fashions. I was most anxious to get him out of here as soon as possible because he was facing the parole board and I thought, things considered, that he might get paroled immediately.

Instead of that, apparently he had some difficulties in Greenhaven and he was back in short order. He has since reached his CR and has gone home.

Q Did you inform him after you spoke with him that you were going to recommend that he return to prison?

A I don't think I did.

Q It's your understanding that he was not aware that the discussion you were having with him constituted an evaluation?

A Well, I think previously we had talked about this very issue of getting out here to get paroled. That was April. Now, there was something else going on because I remember being annoyed that I couldn't get back to Perrelli and explain the thing further to him because he was one of our best men.

Before I could do anything about it, he was out of here. I mean, before I got to him, let's put it that way. I thought he had understood from prior conversations because I would see Perrelli at least once a week, maybe more often.

Or he was outside on the compound hall, and he always waved and said hello and we would stop and chat. We knew he was leaving soon. I was hoping to make it sooner.

He was very useful in taking care of another patient who was a really retarded lad who needed a big brother and Perrelli was just that to Peter Perez, for instance. So I had the highest regard for Perrelli.

Q How did he react when he was told that he was to be returned to prison?

MS. SILVERMAN: I'm going to object to this line of testimony.

A When he was or he wasn't?

MS. SILVERMAN: Objection to the question. I don't see what his reaction has to do with this lawsuit.

MR. GOETTEL: What do you see as being the relevancy of that?

MS. BLOOM: The relevance is that our pleadings indicate that after Mr. Perrelli was informed that he was to be transferred, he attempted to commit suicide by cutting his wrists and throat and that he was, in fact, transferred after this occurred.

It seems to me indicative of his mental condition at the time.

MS. SILVERMAN: Mr. Perrelli has not testified and to me what's in the pleadings is meaningless to this hearing.

MR. GOETTEL: He is a named plaintiff and also, of course, they're not restricted in terms of their basic contention. She's attempting to turn your witness into her witness.

MS. SILVERMAN: I think she can do that, but the only thing is her offer of proof was that he tried to commit suicide and I don't see how she's going to prove that.

MR. GOETTEL: She doesn't have to.

MS. SILVERMAN: Then I don't see the relevancy of his testimony.

MR. GOETTEL: I will allow it. We will see where it goes.

Q Doctor Sweeney, are you aware of what Mr. Perrelli --

A What you have just said?

Q What he did.

A Yes.

Q Would you describe what happened after you informed him that he was to be returned to prison?

A Well, he cut up. His so-called laceration of the throat was covered by a band-aid. I forget the details about his wrists, whether they required suturing. I don't know. I can't answer that. I'd have to go to the record.

Q Did you see him after this occurred?

A No, I did not.

Q Did another psychiatrist see him after this occurred?

A Well, I'm sure somebody saw him.

Q Was it determined that he should be transferred anyway?

A That must have been the case.

Q You were not involved in any decisions that occurred after that time?

A No.

Q Were you consulted regarding what your opinion was since you had been the one to recommend that he be returned to prison?

A No.

Q Did you have any contact with Mr. Perrelli when he returned to Matteawan in August of '75?

A Yes.

Q Did you see him as soon as he came back?

A Yes, perfectly cordial.

Q How did he appear to you at that time?

A Fine.

Q You felt that he should have stayed in prison?

A That's right. We had quite a discussion. We went over the whole issue. My intention that he get out earlier via parole via getting out of Matteawan -- he said he understood that, but that other things had arisen and he just lost his cool and popped.

We then went into a dicsussion of how things were at Greenhaven and he felt that, well, they were less than salubrious, that he had seen a couple of psychiatrists or psychologists, he wasn't sure which, and that they talked with him and suggested that they might find a better program for him in another institution, never mentioning Matteawan.

Apparently, a couple days later, he was seen again. NOw, this is what he told me. He said then he was told that he was going to -- I forget whether it was Auburne or Elmira, but he said, you know, he said, "When I saw that red and white bird cage," that's what the lads call the water tower out here, he said, "I knew where I was coming."

So at that point in time, I said, "Well, I'm certainly not going to ship you out again because it's pointless. You've only got a couple more months to go," and okay, fine, that's the way we'll do it.

Q Doctor Sweeney, do you have any contact with psychiatrists in other institutions in the prison system in New York?

A Yes, almost on a daily basis.

Q Do you know how many psychiatrists there are at Greenhaven prison?

A I couldn't tell you how many there are. In the first place, in most of the prisons, there are no psychiatrists except as consulting psychiatrists. They come in on a Saturday morning or Thursday night and it seems to be the habit at Ossining.

I know these people only by telephone. They do not have to consult me or contact me about 408's directly into Matteawan. They do have to talk to me about admissions to D & E first because of the capacity.

I just can't do everything everybody wants to send on a given date and have to get my population down to where I've got seven beds to take seven more cases in.

Q It's your understanding then that there are no full-time psychiatrists at most of the prisons in the state?

A I think Bedford now has a full-time psychiatrist. I'm pretty certain of that. Attica has a full-time psychiatrist.

What has been happening at Greenhaven, I cannot speak to because there's been quite a re-organization or change going on there. They've been trying to tie into affiliation with, I believe, Harlem Valley, and of course, there are changes in the administration at Harlem Valley.

I really don't know what's going on over there.

MR. GOETTEL: Miss Bloom and MIss Silverman, I think we're spending a lot of time on this issue and while it's interesting in general, I don't know that it has too much to do with this case.

I realize that you are attempting to establish the absence of psychiatric treatment at other facilities as showing a sufficient personal interest to arise to institutional deprivation in the event that a person requiring psychiatric treatment is improperly released from this facility.

I take it the state's position is that they are not releasing anyone from this facility who both requires and could profit from the retention here.

While I know that Miss Silverman hasn't admitted it in her pleadings, and she does raise the issue as to whether there is any institutional deprivation in being put out of the facility regardless of the correctness of the decision, I don't think she's arguing that the state prisons offer anywhere near the same amount of psychiatric treatment to those requiring it that the Matteawan State Hospital does.

MS. SILVERMAN: I did intend to argue that there are some psychiatrists available at the institutions so that given the fact that people are transferred out of Matteawan who perhaps may still be in need of some sort of drug or something to that effect, that that would be available at the institution.

Therefore making, from the total picture -- well, given the vantage point of the total correctional system, that the transfer was not unreasonable and wouldn't constitute cruel and unusual punishment.

MR. GOETTEL: Well, so long as you are sticking with that position, I guess she has to pursue this line.

MS. SILVERMAN: Doctor Wright who will testify next time we meet is a commissioner with the department of Mental Hygiene. "I might point out to your Honor that the psychiatrists in the correctional institutions come under the jurisdiction of the Department of Mental Hygiene, not the Department of Correctional Services.

So Doctor Wright is the assistant commissioner who is familiar with the exact staffing of the correctional institutions with respect to psychiatrists.

MR. GOETTEL: He will testify?

MS. SILVERMAN: He will also now is acting as director of Matteawan State Hospital.

MR. GOETTEL: What you're suggesting there is there's no need to pursue this line with Doctor Sweeney?

MS. SILVERMAN: Doctor Wright, I'm not sure of his specific functions, but the point is he is with the Department of Mental Hygiene and the psychiatrists in the other correctional facilities are under Mental Hygiene. They are not under Correction.

MR. GOETTE: Even the few who are full-time and permanent like Attica?

MS. SILVERMAN: Mental Hygiene.

THE WITNESS: They are paid out of Mental Hygiene whereas our people here are paid out of Correctional budget. However, we operate under the Mental Hygigne Law.

We must.

MS. BLOOM: I have no further questions.

MS. SILVERMAN: The only reason I say it is that one is from the Department of Correctional Services like this, the assistant commissioner in charge of medical services, doesnot control the psychiatric services so there would be no point in asking him questions.

MR. GOETTEL: I really think you are pursuing a lost cause if you think you can convince the court that if someone is genuinely in need of concentrated psychiatric attention that he is anywhere near as well off at Greenhaven or Clinton with a part-time consultant who may come in once a week as he is being in the Matteawan State Hospital which has seven full-time psychiatrists.

MS. SILVERMAN: That wouldn't be my point. My only point being where you have a marginal case or an individual who is suitable for transfer back to a correctional facility is not really in need of hospitalization which is really rather a serious thing when you talk about incarcerating somebody because he's --

MR. GOETTEL: I follow your distinction. If you're dealing with marginal cases who could profit by some psychiatric attention --

MS. SILVERMAN: There's no reason to keep him here if we can make some limited services available at the institutions.

MR. GOETTEL: I see that distinction.

THE WITNESS: It's not only not reasonable. It's against the law. 408 law says you may not, in the absence of symptomatology --

MS. BLOOM: I will reserve the line of questioning for Doctor Wright who will testify. I have no further questions.

MS. SILVERMAN: I just have a few questions.

MR. GOETTEL: I have a few questions. Consider all my questions under the state of facts that existed as of October 1975.

If there have been changes since then, let me know, but otherwise, answer them as of October '75.

At that time, I believe you had seven psychiatrists including yourself on the staff?

THE WITNESS: That's correct.

MR. GOETTEL: How many psychologists did you have?

THE WITNESS: Six or seven.

MR. GOETTEL: About the same number of social workers?

THE WITNESS: Correct, sir.

MR. GOETTEL: In your medical opinion --

THE WITNESS: Now we have lost two of each of those.

MR. GOETTEL: In your medical opinion, discounting the administrative and governmental and budgetary aspects of it, did you have, in October, a sufficient professional staff to afford the medical treatment required by the number of patients here at that time?

THE WITNESS: Absolutely not. By any comparison with other comparable units, there are fourteen psychiatrists at Mid-Hudson which has a capacity of 350.

Hudson River State Hospital, Middletown, Harlem Valley, run on the order of forty psychiatrists. Granted, they're treating twelve, 1500 patients, but one must also consider that the complex of this place has changed considerably.

By its very name and nature, it becomes psychiatrically oriented throughout so that we are expected to furnish urgent consultation to the elderly and handicapped, the general confinement area, work release and then on top of that, they brought the two units down from Actec who were used to having their own psychiatrists and no personnel came with them.

That put an extreme burden -- in fact, I deliberately stated I would have nothing to do with it.

This, of course, was throwing an Irish bluff trying to get Albany to assign some people or bring a couple of people from Dannamora down with the program.

This did not work out and I simply just had to accept the burden.

MR. GOETTEL: Starting with the fact that you have inadequate staff for the job assigned to you and the fact that you testified that you cannot control completely and that many patients are referred here after certification and you have to take them, does that not put on you some pressure to clear out as many patients as you possibly can?

THE WITNESS: Not really because if I got rid of everybody that I felt by my own definition didn't belong here, there would be quite a performance.

Secondly, a while back, we were running at 290. THis doesn't put too much heat on us. When we get up to 320, then we're getting crowded and it's getting awkward and difficult.

These factors do enter into certainly instigating a resurvey of settling the issue of what should be done and who stays and who needs an intermediate zone and who is certainly ready to go back and handle prison.

MR. GOETTEL: Taking into account the elaborate procedures that are employed before somebody is certified here, it would seem that decertification is relatively simply and informal.

THE WITNESS: I agree on the face of it, it seems simplistic. On the other hand, you were asking two outside people to come into a prison, see a man, look at some casual notes written by officers and maybe a nurse if he's been on medical observation in the unit out of prison and make a pretty quick judgement.

On the other hand, very few patients leave here in less than three months. Many spend more than a year here. I think at that point in time, we certainly must know what we're doing or we shouldn't be here.

MR. GOETTEL: In the issuance of certificates of recovery, is it possible that the accuracy of these judgements can be affected by your understaffing problem, the fact that you don't have sufficient people to cover all the assignments?

THE WITNESS: No. I'm very happy to be able to say that's not the case. I'm very proud of most of the men I've got here. I think they're doing one devil of a good job.

It's not a great job because that is

impossible under the circumstances.

But the performance that Doctor Chakir is carrying out on Wards 2 and 3, what Doctor Sirman is doing in D & E, Doctor Factora with Wards 6 and 4, Doctor Feldman with Wards 11 and 9 and then doing all the parole exams for that whole rest of the unit, I think these men are earning their bread, and I'm happy to say that they are critical enough of themselves to be careful plus, of course, let's be honest.

This place has been under the gun for as long as I've been here and before that, of course, and I think that instilled a certain critical caution, too, to make certain what we do isn't going to cause us trouble.

MR. GOETTEL: You spoke of the fact that you put your trouble makers into Ward 3.

THE WITNESS: 6. The acting-out patients go to 6 and the individuals who need seclusion go to Ward 3.

MR. GOETTEL: Is that considered a jail ward?

THE WITNESS: Well, we don't like that term because we're not a prison. We're a hospital. But people use it, unfortunately.

MR. GOETTEL: What is Ward 4?

THE WITNESS: Ward 4 has been closed for almost two years now. It was exactly the same thing. We didn't feel we needed it.

MR. GOETTEL: You testified about the need for getting retention orders after six months and periodically thereafter. If you fail to get a retention order on a patient who wants to stay, does it have the effect of compelling you to release him?

THE WITNESS: Certainly. We don't get a retention order, we cannot continue. That's the whole purpose of the retention order, to protect the patient's rights against involuntary --

MR. GOETTEL: I'm speaking now of patients who want to stay here, but those whom you don't believe belong here. Can you, in effect, cause their release by not renewing the retention order?

THE WITNESS: Yes. I mean, if we don't feel that we can defend the thing in court, we're not going to ask for a retention.

MR. GOETTEL: If someone came up whom you said you had to release because the retention order had expired and not been renewed, can the prisoner request a retention hearing?

THE WITNESS: Yes, he can go through the Mental Hygiene Information Service which comes under the judicial department. But perhaps it acts more as a legal branch than the Mental Hygiene Department.

MR. GOETTEL: I was a little bit puzzled about your testimony to the effect that on the one hand, maximum medical benefit is having been achieved as reason for returning the patient to prison.

On the other hand, absence of progress is a reason for retention. When you have a patient who is in bad shape but who is not responding to treatment, and you indicated there were such, which of those two classes would they fall into?

THE WITNESS: Well, let me clear up what seems a contradiction. Maximum medical benefit, in my terminology, and that is the terminology that comes from the Veterans Administration post World War 2, means that those things which are wrong with this man have been attended to and there is nothing further to be accomplished, and that this man is in a relatively good state of good health.

Now, when you're talking about -- I mean, he may be an amputee, but you taught him how to walk with his prosthesis. There is no point in keeping him in the hospital any more simply because he's got a prosthetic leg.

The other kind of case would be exactly like the Benny Calcicone (phonetic) case where I'm trying to get him paroled.

He's never going to get any better and as far as any of us can make any judgement, he is a severely regressed schizophrenic who stares at the ceiling and rarely looks at you during an interview and indulges in some ecstatic delusions material having to do with God and so on and so forth.

Then he happens to have a very warm family. They would like him closer to home plus if he's paroled into Mental Hygiene Department to a civil hospital, he can have furloughs, he can go home weekends which he cannot do from here.

There is nothing to be accomplished by keeping Benny here any longer. However, we would not throw him out in the streets simply because we cannot treat him further because he's too sick to be unsupervised.

But fortunately, because of this mechanism, we can have the parole board parole him to the civil hospital near his home, his brother and sister-in-law and then he can actually make other adjustments within limits.

MR. GOETTEL: You mentioned that patient as being schizophrenic. I had a recollection from a case many years ago where I represented a public mental hospital with respect to a suicide, that the medical opinion, at least as of that time, was that you could not cure schizophrenia completely within an institutional confinement.

Is that still the medical belief?

THE WITNESS: No. I can't believe that. Institution has become a dirty word to the point where we are going to the other extreme.

Certainly, some of those people sitting in the streets in New York, Long Island, Bronx, et cetera, would be better off in a program in an institution than sitting on the curbside or watching T.V. in a lonely room.

We may have protected their civil rights, but are we taking care of their health?

MR. GOETTEL: I'm talking in terms

of the schizophrenic's problems requiring some degree of development of self control and socialization and going back into sociaty so that there are limits as to what youcan do from a treatment standpoint within either hospital confinement or prison confinement.

THE WITNESS: I think really we have to take two things into consideration. I would agree with that entirely in that obviously as a patient progresses, certainly he should be given more and morechance to adapt to all the things he's going to have to face.

Now, it isn't a question of whether you cure schizophrenia or not. When a schizophrenic patient goes into remission, that person can operate very well or perhaps as well as anyone depending on how complete a remission he goes into.

With a few exceptions, obviously people aren't born to schizophrenia to begin with. So obviously it is a thing which may come and go. In fact, we are beginning to more and more that it is very much like diabetes. There is some chemical lacking that when an effect can be furnished, we are going to be able to control this problem.

Certainly, we had the experience in combat of men who were utterly exhausted who went into a complete catatonic state absolutely, put them to bed for three or five days, feed them warm meals and they'll get up, out of bed and say, "I got to get back to my unit."

Also true in private practice where you have a guy you can't talk to at all, you put him on heavy doses in thorazine and in three days, you can sit there and talk to him and make sense.

Back in the thirties, we found out that if the onset is over six months, you are dropping down to about a seventy percent remission rate.

If the onset is over two years, you may notice it, but it's just about getting worse and worse and worse, you drop down to about a sixty percent or fifty percent remission.

In other words, the more acute the attack, the shorter it's duration, the much greater chance of getting a full remission.

MR. GOETTEL: You indicated both just now and earlier that you make extensive use of chemotherapy in treating many of the patients here at Matteawan.

THE WITNESS: Certainly.

MR. GOETTEL: I take it that the chemotherapy is an important part in both improvement and in apparent improvement in the patient?

THE WITNESS: That's correct.

MR. GOETTEL: You also indicated that while you can make recommendations with respect to the subsequent prison confinement of the released patient, that these recommendations are not always followed?

THE WITNESS: I can't guarantee them, that's correct.

MR. GOETTEL: If, in fact, the patient is indicating progress and improvement and it is the result of the chemotherapy, is it not possible that as soon as he's sent back to prison, if the chemotherapy is not continued, he is going to have an immediate relapse?

THE WITNESS: Exactly so. Not in all cases, but it certainly does happen.

MR. GOETTEL: You also indicated that very often you didn't agree with the admitting doctor's diagnosis on committed patients.

THE WITNESS: That's correct.

MR. GOETTEL: It also appears from the facts that a lot of these people get returned very rapidly after being released and those doctors didn't agree with the diagnosis of the patient from Matteawan.

THE WITNESS: That's correct.

MR. GOETTEL: From this, can we conclude that reasonably competent psychiatrists will often differ in their diagnosis and conclusions?

THE WITNESS: I think that is historically true.

MR. GOETTEL: Off the record.

(Whereupon, an off the record discussion took place.)

MR. GOETTEL: Taking into account the difference of psychiatric opinion in comparing your position on Matthew Gully with the initial position taken by Doctor Factora, I would gather that the two of you did not differ too much in your observations concerning his condition but where you differed was concerning the value of retaining him in the institution?

THE WITNESS: Well, the correctness.

MR. GOETTEL: In looking at Gully's clinical summary and his medical history, it would appear that the three outstanding aspects of his mental history are his aggressive behavior, his borderline mental retardation and possible delusions of persecution.

I take it that you and Doctor Factora have no differences as to the fact that

Mr. Gully gets aggressive and that he may be mentally retarded or borderline there?

THE WITNESS: Well, I'd say probably education. I would say he's probably likely more educationally deprived rather than truly mentally retarded. Basically, Mat has good instincts.

MR. GOETTEL: Do you think he has delusions of persecution?

THE WITENSS: No, I accept that story as a story that you get from almost everybody that's been in Attica.

Well, I was there at the riots and the guards are against me. I'm sure there's some substance to that, but that's a fact, not delusion.

MR. GOETTEL: He's quoted as saying, "Every time I go to the dining room in the prison, they tell me they will kill me."

There would seem to be only three possibilities with respect to that statement; either it's not true and he knows it's not true in which case he's malingering, or it's true and it's accurate in which case it doesn't indicate any delusion of persecution, but it indicates a dangerous condition at the prison, and the third is it's not true or at least not substantially true although he believes it in which case, it might be a delusion of persecution.

Have I omitted any of the possibilities?

THE WITNESS: No, sir.

MR. GOETTEL: Of those three, you are inclined to believe it's the second, that, in fact, these things are occurring?

THE WITNESS: Well, primarily, I think it's a self-serving argument. Of course, at Attica, I don't know. Maybe somebody has got it in for Mat.

But Mat has been in prisons, I think he was at Greenhaven the last time around. I can't keep all these guys' records in my head. Certainly, the guards in every prison in New York State aren't after him.

That's for darned sure. No, I think it's a self-serving argument and in that sense, malingering.

MR. GOETTEL: What youare, in effect, saying is that it has a little bit of all three elements and that to a degree, he's overstating it and malingering and to a degree it has an undercurrent of truth and that perhaps to some degree, he's unconsciously stating the threat which would be a bit of a delusion, but not so extreme as to constitute a psychotic condition?

THE WITNESS: That's correct.

MR. GOETTEL: I would gather from looking at Gully's record and from looking at some of the others and from having heard your earlier testimony that an area in which you are not possibly in complete agreement with some of the other psychiatrists concerned the treatment and retention of aggressive personalities.

Does extreme aggression constitute a mental illness?

THE WITNESS: I think totally uncontrolled aggression, certainly. We have had some lads here that -- well, recently, we had a lad hit a nurse and that nurse is about the sweetest and most hard-working and closely related individual to the people on that particular ward.

But this lad is a very sick guy. He's totally unpredictable. We again made an adjustment in his medication trying to get some answer to his problem.

But he's one of those very bad cases in which you always have about four to five. There's no question about that sort of thing, but when, by his own admission, the only time a man gets in trouble is when he has some booze, and he has a remarkably low tolerance for booze, I don't think I can take that in the same light.

MR. GOETTEL: You don't consider then the degree of aggression displayed by Gully to be necessarily symptomatic of mental illness?

THE WITNESS: No, sir. I think it's a classic street personality.

MR. GOETTEL: You refer to it

I believe, as a personality disorder or psychopathic personality?

THE WITNESS: Correct.

MR. GOETTEL: Is there really so sharp a dividing line between a psychopathic personality and a psychotic personality?

THE WITNESS: I think so, yes. A psychotic individual basically, with the exception of depression, is out of contact.

He's distorting reality, so on and so forth.

A psychopath is very often a very winning personality, charming fellow and works everybody's life around him, father, mother, sister, brother, what have you.

He just can never learn moral and social judgements. It's more of a learning defect or a judgemental defect and an emotional explosion, let's put it that way.

MR. GOETTEL: Well, this case concerns, at least from the standpoint of the pleadings, primarily aggressive personalities and it's the plaintiffs' contention that because they are behavior problems and cause commotions in the institution that they are being transferred out as a reaction to these aggressive tendencies that they are exhibiting.

I understood you, however, to testify that that's not so, that you have a particular ward for treating patients who act out their aggressions and that you never transfer anyone simply because he's a behavior problem even though it may become so extreme as to endanger other patients.

MS. SILVERMAN: Objection. I don't think that was the testimony.

MR. GOETTEL: I'm asking him if that's what he testified to.

THE WITNESS: Yes, I would say that's true. We have sick people here who, well -- we had a stabbing recently. The lad is an extremely sick guy and he was apparently becoming worse.

If enough people just didn't watch their P's and Q's closely enough and all of a sudden, bingo, we were off on a real tail spin.

But I would say that where we have people who have definitely shown evidence of recovery of maximum medical benefit or really require little if any -- they're carrying out their programs, this, that and the other thing, they should be leaving.

Now, it is possible that coincidentally, a patient has arrived at that point where he's due or even overdue for discharge and an altercation occurs and everybody takes a look and says what the devil is he doing here in the first place.

He should be out of here sometime ago.

MR. GOETTEL: I don't have it in front of me now. It was shown to me a while back. I believe it's Plaintiff's Exhibit #1.

One of the doctors, in reviewing Mr. Gully, and commenting on his belligerent tendencies, said that, "It might be necessary to return him to regular correctional facilities."

That's a fairly accurate quote taken

from something I saw earlier.

That suggests to me that that doctor had in mind getting rid of him solely because of his aggressive tendencies that made him too difficult to treat here.

THE WITNESS: No. In the first place, Mat Gully isn't that difficult to treat. I think the reaction throughout the institution, whatever ward Mat's been on, has been what's he doing here?

The fact that periodically Mat gets into a tail spin with some guy, that's so commonplace here that that wouldn't disturb anybody.

I don't think that follows.

MR. GOETTEL: Looking at it from the other standpoint, if you sent a patient like this back to a maximum security prison where he would more than likely not be kept on the same tranquilizers that he's been provided with here, and if he's an aggressive personality and belligerent on tranquilizers, I think we can foresee the likelihood that he's going to be involved in several altercations fairly rapidly back at a maximum security institution.

If that occurs, will not their solution for the problem be to have him recertified right back to you?

THE WITNESS: Well, either that or they'll put him in isolation, something like that. But you see, what we have in mind when we recommend a maxi setup for a guy is that he's a tough customer when he's riled and provoked by whatever and that, as you may or may not know, most of the prisoners have better occupational programs and that kind of thing, vocational programs than we have here because of the old traditional Matteawan being for the mentally ill.

What we have hoped for many of these chaps, especially if we can get them into certain programs which are better than others, is that they will at one point in time finally learn a useful trade.

We have had one man go up to Walkill and he was a lens grinder. You know, that man is going to be well employed the rest of his life because lens grinders are at a premium.

Teaching a man to make ashtrays, I don't think that's going to do him a hell of a lot of good outside, especially at the present time.

So what we try to do is get the man into a program that, one, will utilize his energies and, two, teach him something that he can use the rest of his life.

That's why I want him out of here, because I can't give him that here.

MR. GOETTEL: My question that I am really asking you is you don't apparently consider aggressive behavior and belligerence,unless it's very extreme, to constitute sufficient reason for retaining a person here at Matteawan.

But I get the impression that when these persons get back to the maximum security institutions, and start creating those kinds of problems, that the solution of that institution is to believe that he's in requirement of medical and mental treatment and to ship him back to you and it seems to be a little bit of a back and forth effect here.

THE WITNESS: Correct. You see, obviously a man in a cell block of 600 prisoners just banging on the bars and yelling his head off can get the whole cell block going.

Obviously, we're in much better shape to handle that kind of thing. Only forty people, three officers on two shifts and two officers at night.

That's fine and dandy, but again, I have to pay some attention to the requirements of the 408 law.

If nothing is happening other than an occasional fight, certainly, you would never stand a chance of keeping anybody in Hudson River State Hospital on that basis. You would be sued for your shirt.

MR. GOETTEL: You didn't testify, or at least I didn't note you testifying at all about Hector Cruz or the witness earlier today, Mr. Poveromo.

THE WITNESS: I'm not as conversive with them. I happen to know Dunleavy and Mat Gully very well. It was the attorney's decision that those doctors who had had greater personal contact, professional contact with them, would cover those areas.

MR. GOETTEL: Speaking of Gully to the extent that you suggest that he is malingering and really need not remain here at Matteawan, but prefers being here at Matteawan, I noted from his admission sheet that he's already passed his conditional release date, which would indicate that he had a substantial possibility of parole sometime ago had he not been spending so much time here.

THE WITNESS: There is a note in the chart about his parole. I think he was set over for eighteen months, Your Honor.

MR. GOETTEL: Conditional release date on his admission study is listed as being October 15th, 1975. Does not the fact that he is imperiling his parole possibilities by staying here somewhat speak against the possibility of malingering?

MS. SILVERMAN: Conditional release has nothing to do with parole. It's automatic.

MR. GOETTEL: I don't know why he's still here considering that he's beyond his conditional release date.

THE WITNESS: His conditional release is 10/15/76.

MR. GOETTEL: It says here '75.

THE WITNESS: Somebody made an error. This is the official sheet, sir. His max is 8/15/80. I had an order for retention signed in September of this year.

MR. GOETTEL: If his max is '80, then he was in error in his testimony, because he said he went to Attica in '68 and he's on a maximum of ten years.

Is it possible that what you've got in front of you is in error?

THE WITNESS: Burglary, first attempt, robbery first, assault second, and it's 10 -- he was sentenced by Judge Hannigan 6/11/69.

MR. GOETTEL: He must have been in error then in his own testimony. However, going back to the fact that he is well into his parole consideration and, indeed, has been for a number of years, don't you think this possibility is somewhat contradictory to the belief that he wants to stay here in Matteawan although he doesn't need to?

THE WITNESS: Well, I think it has a certain force in that direction, but again, knowing some of these people in general and knowing some in particular, there areguys that don't want any part of this place and buck like the devil coming in here even though they're sick and there are guys who think this is the only place to do your time and get it over with.

Now, by and large, we also have people, sir, who will not accept their CR because if they go out under CR, they are out on parole.

They will stay until their max because then they're out and they're free and they'll have nothing to do with us, or the system.

I was looking for a reference to the parole board in here.

August 7th, '75, he saw the parole board. New appearance was held eighteen months. The board in February '77 which doesn't fit with his CR date of '76 --

MR. GOETTEL: Returning to the problem of dealing with belligerent and aggressive patients, what do you think that Doctor Feldman had in mind on this February 11th evaluation when he said, "If his belligerent tendencies continue, despite all other measures, it might be necessary to return him to a regular correctional facility"?

THE WITNESS: I think that's what we were discussing before. THat if he is simply belligerent and gets into occasional fights and he has no overt mental illness other than a tendency to get into physical contests, probably what he had in mind or you will have to ask him, and you will have that opportunity, it was probably a maxi-maxi setup with rigid discipline where that sort of thing cannot occur.

MR. GOETTEL: Would that not be, in effect, it's unimportant whether you call it punitive or what, but would that not be a non-medical solution to a medical problem?

THE WITNESS: If he had evidence of psychosis or any severe mental illness, then I'd say that would be the wrong thing to do obviously.

If all we've got is a guy that likes to fight, is an ex-boxer, this is his way of life, this is his answer to any problem, I don't know that I can call that a psychiatric condition.

MR. GOETTEL: Well, besides the aggressive --

THE WITNESS: Unless you want to call it a conditioned reflex.

MR. GOETTEL: Besides the aggressive

patients, I'm sure you have other patients who fall into the realm of what they often call activists, those who are petitioning for this change or that reform or complaining about this and what have you.

As a psychiatrist, I'm sure you are aware that human decisional processes are not always influenced only by those factors which are supposed to be directly considered.

Do you think, on making a release decision, you or any of the psychiatrists on your staff may unconsciously decide to release problem prisoners simply because they are problems and not because they're medically ready for release?

THE WITNESS: No. I think I can answer certainly for myself and I think for the majority of my staff.

We have had, as you may know, a good deal of litigation going on here -- what I mean is this, that obviously the people involved in these suits are still here.

That's not by court injunction. We are anxious to get them out as cleared up.

Now, several of those people are and have been for sometime certainly, in my opinion, and I think in the rest of the staff's opinion, they don't belong here, but until the courts make some decision -- I mean, one of the problems that we have, if anything is in reverse to what you were implying, the law is constantly changing every day.

There are Federal decisions, there are state decisions that modify what we're doing. The 730 law went down the drain sometime ago.

Now, the 408 law obviously is going to have to be rewritten. Parole now is apparently approaching something close to due process.

I mean, you're going to have to explain why you are turning a guy down. It's not going to be a secret society any more and that's good.

Whether or not due process will get into this sort of situation, Miss Bloom is arguing. If that's what happens, that's what happens, but at the moment, it isn't there. It's presently by law a medical decision.

MR. GOETTEL: One of the patients who testified on the last occasion indicated that because of his assaulting some of the prison correction officers, that their union or their association put pressure on the doctors to have him transferred out of the hospital.

At least that is my recollection of his testimony.

Do you pay any attention whatever to the wishes of the correctional officers with respect to prisoners?

THE WITNESS: Certainly not and certainly not in that kind of a situation. The union is not running this place. Mr. Ternullo is, and he's running it with a certain number of doctors and a certain number of officers.

Now, obviously, if there's a labor-management problem, they take itup at such a meeting. I have, on one occasion, been party to such a meeting not because we were moving somebody out that was causing trouble or anything like that, but when I had to defend the concept of creating ward 6 where we have all the acting-out patients, the union was a little leery of the whole thing and felt that putting all the dynamite in one spot was a bad idea.

Well, it's turned out to be a good idea, so we're all happy about it. That's the only time I have ever been approached formally.

Now, certainly an officer or two or three may say to me, "Gee, why don't you get rid of that guy, he's a pain in the neck."

Well, you know that's chatter. That doesn't cut ice. It certainly can't be part of a professional judgement.

MR. GOETTEL: The pattern which the plaintiffs have been attempting to show through the witnesses they have presented are patients who are evaluated and found to need further treatment with their retention recommendation, who thereafter get into an altercation usually involving guards, following which they're quickly re-evaluated usually by five or so psychiatrists who talk to them for just a few minutes, following which they are found ready for release.

THE WITNESS: I can't accept that.

MR. GOETTEL: It's your belief that the fact that these persons were involved in altercations usually involving guards had nothing whatever to do with the re-evaluations which found them to be ready for release?

THE WITNESS: I wouldn't put it that candidly. What I said to you before is that a patient who is obviously well and just hasn't come up for re-evaluation gets into an altercation and that may be the thing which brings everybody's attention to the fact that what's he doing here, he's fine.

He should have been out of here last month. I'm not saying that that doesn't happen because it does happen.

But I will absolutely deny that because a guy had a fight that we immediately ran around the corner and wrote him up and shipped him out.

There isn't any need for that.

MR. GOETTEL: That concludes my questions.

MS. SILVERMAN: I just have two questions.

RE-DIRECT EXAMINATION

BY MS. SILVERMAN:

Q Doctor Sweeney, does the parole board meet at Matteawan State Hospital?

A It does.

Q Do patients here continue accruing good time while they are at Matteawan?

A They do. They lose no time here.

MS. SILVERMAN: I have no further questions.

MR. GOETTEL: Anything further, Miss Bloom?

MS. BLOOM: Just one question.

RE-CROSS EXAMINATION

BY MS. BLOOM:

Q You stated, Doctor Sweeney, that a fight may bring to your attention the fact that someone is recovered and is well enough to return to prison.

Why would a fight bring that to your attention?

A Well, let's say it's somebody I am aware of, one of the patients that I may know a lot better than some of the others.

I might say what the heck is going on here, I thought he was doing beautiful. I thought he was about ready to get out of here. How the devil did he get into a fight.

You go into the thing and you find out it wasn't his fault at all, the other guy popped him. Now your attention is focused on the man and you do bring him up for evaluation and he's fine and dandy and there's no reason for him to stay here.

In fact, very often, I would say the number who want to go out comes pretty close to equalling those who go quite well, very well and are going to argue like mad to stay here.

That's the only -- I suppose that's the

only reason we do keep a certain balance here, that we do have a reasonable number of people who ask to go out over and above those who must go.

MS. BLOOM: I have no further questions.

MR. GOETTEL: We stand adjourned until February 6 at ten a.m.

(Whereupon, the hearing was adjourned at 4:00 p.m.)

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I, MAUREEN KRAMER, a Notary Public of the State of New York, do hereby certify that the foregoing transcript is an accurate record of the within proceedings.

Maureen Kramer

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X

HECTOR CRUZ, MATTHEW GULLY, CARMINE FERELLI,
individually and on behalf of all persons
similarly situated,

Plaintiffs,

-against-

BENJAMIN WARD, individually and in his capacity
as Commissioner of the New York State Department
of Correctional Services, VITO M. TERNULLO,
individually and in his capacity as Director of
Matteawan State Hospital, LAWRENCE SWEENEY,
individually and in his capacity as Chief of
Psychiatric Services of Matteawan State Hospital,

Defendants.

---X

Matteawan State Hospital
Fishkill, New York
March 8, 1976
10:30 A.M.

BEFORE: GERARD L. GOETTEL,
U.S. Magistrate

APPEARANCES:

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BY: ARLENE SILVERMAN, ESQSS.

MAUREEN KRAMER
Reporter

MR. GOETTEL: Call your first witness.

MS. SILVERMAN: Ali Sirman.

ALI SIRMAN,

after having been duly sworn, assumed his seat as a witness, was examined and testified as follows:

DIRECT EXAMINATION BY MS. SLIVERMAN:

Q Would you state for the court what is your current position?

A At the present time, I am functioning as a psychiatrist to grade 38 for the State of New York.

Q Where are you employed?

A I am employed through D & E diagnostic and evaulation unit as chief of the unit.

Q Do you have any other duties at Fishkill?

A Yes, I cover Matteawan State Hospital. The other units in Fishkill and especially when we are on call as an O.D. covered entire complex. Sometimes night or weekends.

Q Could you explain your professional background, doctor?

A Well, I graduated Istanbul Medical School,

1949. I completed by internship and residency of internal medicine and pulmonary diseases 1954.

Q Where was that?

A Ankura, Turkey. Certified and licensed after following my training, '54 to '59. I have been practicing at the same time I have been consultant at American Air Force, General Hospital in Turkey and taking care of health of American ambassadors and his family.

Then '59, I immigrated to Canada and as Canadian authorities require Canadian and A.M.A. standard internship, I go ahead and make one year internship in Montreal, St. Mary's Hospital which all those places are A.M.A. recognized as hospitals.

Q Was that a general internship?

A Rotating internship. We may say general internship including pediatric medicine, psychiatry, emergency, gynecology, full.

Then I worked three years in thoracic surgery at Saint Lambert General Hospital. Then I chose psychiatry as the specialty of my medical background.

I registrated Magill University in Montreal and after five years of psychiatry training, I graduated as a psychiatrist. I certified by Magill diploma and in the meantime, Magill and Vermont University was supporting New York State Correction Department and we were leading scientifically to Dannamora State Hospital and commissioner offered me full time job at Dannamora.

1970, I started to work as psychiatrist at Dannamora.

'72, Dannamora phase out. I come down here as a deputy director and on and off as an acting superintendant and medical director.

Then political wind is changed. Commissioner change, everything is change, and I give up to administrative job and return to my professional job again and since then, I am working as a chief psychiatrist at D & E unit.

Q Are you licensed to practice psychiatry in Canada?

A Yes, I am certified Canadian Psychiatric Board. I am eligible to LMCC and FCCP.

Q What is that, doctor?

A LMCC, is a Canadian National Board. FCCP, Fellowship Canadian Psychiatric Board is an eligibility, means eligibility, means eligibility to the licensing and certificate may function by law in the institution, but cannot open the private clinic.

Q Are you licensed by the State of New York?

A No, I am not.

Q Is there a license by the State of New York?

A I'm sorry.

Q Is there a license? Do you have to be licensed by the State of New York?

A Not necessarily for the institutional psychiatrists. It is necessary for private practicing, but not institutional.

Q Now, as part of your function here, doctor, do you evaluate patients periodically?

A Yes.

Q During this evaluation, do you ever make a determination as to whether someone should be certified back to prison or not?

A Very often.

Q Are there written standards that have been given to you that are to be applied in making a determination as to when someone should be certified back to prison or not?

A No.

Q Have any oral directives been given to you?

A No.

Q What standard do you apply?

A Well, psychiatry is a very dynamic science or art. Somebody discuss about the scientific of psychiatry. Psychiatry is a very dynamic science. Dynamic science meaning changeable at the need of the patient and their actual mental condition. I may certify somebody during the time of my examination, but I cannot produce exactly if the man will attempt to suicide two days after my examination or not.

My medical psychiatric instrument for evaluation, first of all, is the man neurotic or psychotic. The difference between neurosis and psychosis, the neurotics imagine that they have a castle on the skies, but the psychotic rent the castle and accept the fee.

Then while I examine a patient, first things first, I check his reality contact. Is the man have a contact with reality, is he competent, does he know what he is doing.

If I find him functioning and non-psychotic I don't hesitate to discharge him out of the institution. There are some neurotics may stay in the institution, but the budget the institution physical possibilities limited us only to go three hundred thirty maximum census. Otherwise, if we attempt to keep all the neurotics, we need a ten thousand bed hospital.

MS. SILVERMAN: I would like to offer at this time the clinical summary and progress notes of Luis Poveromo.

(The above mentioned document was marked as State's Exhibit D for Identification.)

MS. SLIVERMAN: I might add that these were progress notes I was given last time in court. There might be some additional ones, but I don't have them with me. I am just offering these as far as the record goes.

MR. GOETTEL: Any objection?

MS. BLOOM: No.

Q If you hold that, Dr. Sirman, if you will direct your attention to the progress notes dated January 27, 28 and 31 of 1975. If there are some prior ones you want to look at, by all means.

A You say January 27?

Q Yes, 27, 28 and 31. If there are prior notes that you want to read that are notes, fine.

If you will read those to yourself and then I have a question.

A Well, there is one thing is very interesting here.

Q Did you read all of them?

A Yes.

Q Read the 27th, 28th and 31st.

A Okay.

Q Now, Dr. Sirman, on January 31, 1975, did you certify Luis Poveromo for transfer back to State prison?

A Yes.

Q In your opinion, was he at that time suitable for certification back to State prison?

A Yes.

Q Why?

A Because according to my notes and my memory, he has been diagnosed anti-social personality disorder which is untreatable mental personality disorder. Matteawan cannot offer more than did offer for this man, and I believe he end up his life wherever he live with the same personality disorders.

The second diagnosis is psychotic depressive reaction which he was treated while he was in Matteawan.

Q You personally interviewed Mr. Poveromo, is that correct?

A Yes.

Q On these various occasions that are noted on the chart, is that correct?

A Yes.

Q Did you have any other contact with Mr. Poveromo around this time or while he was at Matteawan prior to this transfer on January 31, 1975?

A Yes, I know mostly all the inmates and patients in Matteawan.

Q Why is that?

A Because my years back working experience in Matteawan enforced me to be contact with them constantly, and while I was on night call or weekend call while I was obliged to cover entire institution, I got to know them and besides have this almost daily contact wherever I saw them, in the corridor, in dining room or in their wards.

Q Now, Mr. Poveromo testified that in January of 1975, he stopped a disruption between guards and that it was because of this incident that he was certified back to State prison.

Did you certify him back to State prison because of that statement?

A What was the date of the fight you said?

Q Well, he testified that in January 1975, he was involved in some disruption between guards. I don't believe it is noted on the sheet in front of you.

A Not to my knowledge. I don't know.

Q Did this form the basis of your decision to transfer him back to State prison?

A No.

Q Now, Dr. Sirman, on February 25, 1975, Luis Poveromo was readmitted to Matteawan State Hospital. Would you take a look at the progress notes around that date?

There might be a readmission note and it might also be noted on the running chart, if you will just take a look around 2/25/75.

A Yes, admission note, yes.

Q 2/24/75?

A 2/24/75.

Q Would you just read that, Dr. Sirman?

A Yes, I read it.

Q Did you examine Mr. Poveromo on that day?

A No, I didn't, but Dr. Schaeffer examined him, and I agree with his diagnosis because the same diagnosis, personality disorder, anti-social which is my discharge diagnosis, and I said psychotic symptoms were not detected.

It means that it is indicated that this man is very malingering and manipulating personality which fit with his diagnosis.

He play while he was in the correctional department. He play crazy actually to come back here again. But while he is under the psychiatric screening, different doctors in this institution did not find him mentally ill. This kind of anti-social personality disorder---

Q What is that, doctor, essentially, if you could explain it in lay terms?

A In two words, I may say very egocentric personality, only himself, do not consider his environment, cannot tolerate any frustration, cannot tolerate any stress.

Q Is that a psychosis?

A No, it's not psychosis.

Q Is it treatable?

A It's not treatable.

Q Now, turning your attention to another individual, George Mitchell, who has not yet testified, but I am going to assume that he is in the case, your Honor, for purposes of---

MR. GOETTEL: Is he waiting outside?

MS. SLIVERMAN: Yes. I don't believe his chart has been marked into Evidence yet, so I have his clinical summary and progress notes, and I would like to have that marked for Identification. That will be E, I believe E, I believe.

(Whereupon the above mentioned document was marked as State's Exhibit E for Identification.)

Q I show you State's Exhibit C in Evidence and it's the clinical summary and progress notes of George Dunleavy.

I would direct your attention specifically to two notes that were written by you. If you will read them to yourself and then we will have a question for you, January 24, 1975 and February 11, 1975.

If you want to read any other parts, please do.

A Okay.

Q In your opinion, doctor, on February 11, 1975, when you examined George Dunleavy, was it your opinion that he was suitable for certification back to

State prison?

A Yes. Well, not only February 11, '75. Even before that. I know Dunleavy very well. He come here via D & E unit. I knew him at the D & E unit. When I examining him the first time, he did manipulate me very intelligently, but he has been very honest and he told me that he cannot take prison life. He told me that he suffers with claustrophobia and he asked me to keep him in Matteawan.

He had some previous background, as I said in note of January 24, schizophrenia chronic undifferentiated, but is at the present time of interview, this patient is in remission.

Okay. Means that I couldn't find him psychotic, but he may have this kind of disease before my examination or before the time I met with him. In February 11 '75, I did evaluate him. I couldn't find any psychosis.

He has been a good contact with reality, cooperative, understandable and oriented for time, place and person. As I said, his judgement, thought process and perception were found to be within the normal level.

Okay. Now, the man is extremely intelligent, very much manipulative. He could be easily a president of Angola or somewhere else by his manipulation and he did manipulate me, too. He promised me that he will be helpful for administration which he is working at the law library and he pretended himself as a legal aid lawyer or jailhouse lawyer for the inmates.

It was kind of mutual understanding between him and myself that he will help the inmates for their legal problems and as he has a difficulty in prison, he may stay the with the media which seen the the psychologists, psychiatrists, social workers, expressing his fear and anxiety is kind of therapeutic for him. Naive personality, and I found out that we have been one of the best targets of his secondary game which is escape. This is minimal security institution. We are keeping maximum security inmates.

Q On February 11, 1975, when you examined George Dunleavy, which was prior to his subsequent escape, in your opinion, would he have been certifiable or was he certifiable back to a State prison?

A Yes, he was right from the beginning certifiable from the State prison. But that's why I refer decision to the administrative level. I mean, if the administration wanted to keep this man in the way of his helping to the inmates, they are free to keep him here. But medically, he is the subject of discharge.

Q Now turning your attention, doctor, to two other inmates, Matthew Gully and Hector Cruz, I have Matthew Gully's records marked as State's Exhibit B.

I show you State's Exhibit B in Evidence. It's the progress notes and medical history on Matthew Gully.

Now, doctor, do you recall evaluating Matthew Gully?

A Yes, I recall him very well.

Q On October 21 or thereabouts?

A Yes, I remember him very well.

Q I think it was October 20, 1975, in one of the restraining sheet wards.

A I am coming now---do you mind to go ahead a little bit before your question, before the time of your questioning? Because I find my notes here March 14, 1974.

Q I was going to ask you and perhaps you can bring it all in at once then, did you certify Matthew Gully on October 20, 1975 suitable for return to State prison?

A Yes.

Q Was it your opinion at that time, doctor, that he was medically suitable for returning to State prison?

A Certainly.

Q On what do you base that opinion or why is that your opinion?

A Because he is carrying an explosive personality disorders and anti-social personality disorders which I indicated in my note of March 14, '74 and he has been involved with lots of disturbance, especially Attica riot and he has displaying neurotic elements, but even March 14th '74, I couldn't find him psychotic.

Q Now, between March 1974 and October 20, 1975, did you have occasion to see and speak with Matthew Gully either in an evaluation or on the institution grounds?

A Yeş, on and off, different places.

Q Did you, on October 20, 1975, find him free of mental illness such that he would be suitable for return to State prison?

A Yes, he was suitable to return to State prison.

Q What was his condition on October 20, if any?

A I am looking. According to final

diagnosis, the man is suffer for borderline mental retardation and personality disorders which none of them are treatable at Matteawan State Hospital.

Q Matthew Gully testified that he was involved in some sort of an altercation on October 17, 1975 and that he was certified for transfer out of Matteawan State Hospital because of that fight.

Did you concur in the decision to transfer him out of the Matteawan State Hospital because of this fight?

A No. But it's his diagnosis borderline mental retardation. I don't really give any importance---- I won't even give any importance what does he said because his IQ is not permit him to give adequate judgement. He is mentally retarded.

Q Turning your attention now, doctor, to the medical chart of Plaintiff Cruz marked into Evidence by the Plaintiffs, I would direct your attention, doctor, just to read to yourself and then we can question you a question or two, if you will turn your attention to January 20, 1975.

Directing your attention to October 20, 1975, doctor, would you read that note there?

A Okay.

Q In your opinion, doctor, on October 20, 1975, was Hector Cruz suitable for return to a State prison?

A Yes, he was suitable.

Q Why?

A Because he has been diagnosed finally schizophrenia residual type.

Q What is that?

A It's mean that kind of psychosis but in remission. He got maximum benefit from treatment and he got to go out, make his living at the other institution.

By the way, I would like to tell you the modern dynamic of the psychiatry all around the world in United States, especially in New York State mental health psychiatric institution, maximum hospitalization stay is between thirty to forty-five days. They discharge even most seriously ill patient following the initial treatment and they follow up in the out patient clinics because mental disease, mental disease increasing unbelievably high.

Entire state or states don't have a facility to keep them in the mental institution and not necessary to keep them in the mental institution like seventeenth century oriented treatment.

Q Mr. Cruz testified that he was involved in a fight on September 17, 1975 in one of the wards here and that, in his opinion, this was the basis for his certification back to prison. Was that the reason you concurred in his certification back to prison?

A I don't agree with his opinion. He is free to think what he wanted to think.

Q I just have to take you back to Matthew Gully because there was one further question I did want to ask you about Mr. Gully.

Mr. Gully testified that you told him that he was transferred or that pressure was being put on you or on the staff by the prison guards to transfer him out.

Did you ever tell him that?

A Typical criminal behavior. They play around a situation for that.

Q Was pressure being put on you by any particular guard?

A No.

MR. GOETTEL: More important, did you say to him that the guards were pressuring you to return him?

THE WITNESS: No, your Honor.

MS. SILVERMAN: I have no further questions of Dr. Sirman.

THE WITNESS: By the way, I am very pleased that this question has come and why I say typical criminal behavior. It's fit again for the anti-social personality disorder because this personality disorder, they love to manipulate it in every circumstance and they really have a pleasure to manipulating entire institution or entire system. This is one of the small examples.

MS. SLIVERMAN: I have no further questions of Dr. Sirman.

MR. GOETTEL: Cross-examination?

CROSS-EXAMINATION BY MS. BLOOM:

Q Dr. Sirman, are you licensed to practice medicine in the State of New York?

A No.

Q Are you licensed to practice psychiatry in the State of New York?

A No.

Q Are you certified by the American Board of

Psychiatrists?

A I am eligible.

Q What is the difference? What do you mean by saying you are eligible?

A Eligibility means legally completed acceptable and approved training, only it's optional to take examination or not. It's not necessary to take a board examination for this specialty. You may perform your specialty depending on your training.

Q Are you qualified by the American Board of Psychiatry?

A No, I am not.

Q I'm going to ask you questions now, and I would like you to use October of 1975 as your time period in answering these questions.

At that time, what patients were you responsible for?

A I didn't get you. I'm sorry.

Q What group of patients were you responsible for? Were you responsible for a particular ward?

A No, I wasn't. I was responsible at D & E unit and as all the psychiatrics there in this institution, we are knowledgeable almost all the hospital population.

Q So you were not directly responsible for treating any patients at Matteawan?

A I wouldn't say not directly responsible treating any patient in Matteawan State Hospital. I would say yes because twice a week, I have been on call in this institution, and was the only doctor to answer the need of the entire institution.

Q So did you see patients at Matteawan approximately twice a week?

A Not all of them, but some of them, maybe most of them.

Q Did you see particular patients twice a week or were you on call on a rotating basis throughout the hospital?

A I am available on the call. If they call me, I see them.

Q In your opinion, what kinds of illnesses do patients at Matteawan have, generally speaking? Are they generally psychotic and neurotic? Are they generally only psychotic?

A Well, Matteawan supposedly designed only for psychotic patients. By the budget commission, by the personality---not personality, by personnel possibility, by the staffing. Matteawan is three hundred---between three hundred thirty census. Small hospital and hardly answers the need of very seriously ill psychotics.

Q Are most of the patients at Matteawan psychotic?

A That's right.

Q How often did you see patients at Matteawan for evaluations, and I am still talking about the period of time in the fall of 1975.

A I used to schedule for evaluation of Matteawan almost every afternoon two or three patients routinely. I don't know how often I may see one patient, maybe every two months or three months, maybe less than this. I am not scheduling. I am not making the schedule. Schedule made my the clerk and sent to different psychiatrists.

Q Were you seeing patients at Matteawan for evaluations while your primary responsibilities were D & E?

A Yes.

Q Who would initiate these evaluations? Were you given a list pf people to see by the administration?

A This evaluation originally initiated

me and Dr. Agnew in 1972. The reason of this initiation is as we are short of staff and functioning under staffing with heavy pressure, we told that it could be better if besides of their daily activity, the psychiatrists be available to see them in the evaluation and then '72, we decided to create evaluation center.

In that sense, all the psychiatrists in the entire institution had a chance to form their daily routine in the morning and be free afternoon to see population with their folder and complete evaluation.

Q In a particular evaluation, who would initiate the evaluation? Would you be sent a list by the administration of people that should be seen in a particular week?

A Well, I wouldn't say. It's a routine list. It's a routine evaluation. It's come through one of the secretaries prepare the list around sent routinely to the---I don't know what would I say, just like your court schedule. You have schedules sent to you, you are here and you are doing it. We are scheduled to evaluate it and we are done.

Q Do the psychia rists ever get together and formulate a list of patients that should be seen?

A Well, sometimes. Mostly every morning.

Psychiatrists have reported each other what happening the last night, which patient need extensive care, which patient need some different therapy, and I believe psychiatry is not individual practicing in institution. It's team work. That's why the modern psychiatry today is not mesmerism.

Q Are you saying then that something might happen in evening that would cause one of the doctors to recommend that a certain patient be evaluated?

A That's right, that's correct.

Q What kind of behavior might initiate a doctor or might make a doctor suggest that evaluation be made?

A Let's say one of the patients breaks down acute psychosis and attempts suicide and cuts himself very seriously and deeply. The doctor on call reported his condition next morning and warned them that keep very close eyes this man. Otherwise he may act to suicide. I think if he didn't do this kind of reporting, he isn't doing his job. This kind of---

Q What kind of behavior would make a doctor suggest that an evaluation should be made to determine whether or notthe individual be returned to State prison?

A Any change of behavior is the subject of immediate evaluation.

MR. GOETTEL: I don't think you heard the end of that question, doctor. She is asking you not what sort of behavior can lead to the treatment evaluation, but what sort of behavior might lead to an evaluation for purposes of return to prison.

MS. SLIVERMAN: I object to that question, your Honor, because there's been no testimony that evaluations are done for the purpose of tramferring people back. As I understand it, they do an evaluation and if it turns out during the course that someone is certifiable back, that may be the outcome.

But I think it's a loaded question in a sense because there's been no testimony that that is the procedure.

MR. GOETTEL: Let's first ascertain is that not what you were attempting to elicit?

MS. BLOOM: Yes.

MR. GOETTEL: Then we will put it first in the question.

Can behavior of a patient lead to evaluation oriented to the possible return of the patient to prison?

THE WITNESS: It will be the result of evaluation, but the behavior of the patient may be a subject for evaluation. But it is not prejudgement of discharge or any change of treatment.

Everything come on the surface during evaluation. If a psychiatrist responsible for the evaluation, he has to follow 408 Correctional Law or mental hygiene insanity law which, I believe, in general rules, the law enforce the psychiatrists to make his decision the time of his examination and if psychiatrist is the impression that at the time of his examination patient is not presenting any psychosis, boom, he is the subject of discharge.

Q Are there certain individuals that you are responsible for conducting evaluations of in Matteawan or do you just get lists of people on a completely random basis and evaluate those individuals?

A On random basis.

Q Do you ever have occasion to evaluate the patient at some time other than a scheduled time for evaluation?

A If somebody is absent, if I covered him, if there is some need of---I mean I could be on vacation, somebody else replace me and he take all my responsibility or somebody's on day off or sick leave or vacation and in that kind of possibility, yes.

Q So you might see one patient once a year and not see that patient again until the next year?

MS. SILVERMAN: I'm going to object to that question. I don't know what the word "see" means. Is that see for a formal evaluation---

Q See for a formal evaluation.

A Yes, it depends of the schedule. I have been filling routinely until beginning of almost '76 on and off afternoons evaluation. But I quit, you know, because I am extremely busy. I really don't have time to give. If I could have time, I may return tomorrow the same job.

Q What documents did you normally consult before you spoke with a patient for an evaluation?

A His folder, his background.

Q What documents are in that folder?

A Observation, symptomatology, psychiatric findings. For example, what is the diagnosis of mitral stenosis. Diagnosis of mitral stenosis is a dyastolic murmur on the mitral valve, bringing to the diagnosis of the doctor that the patient has a mitral stenosis.

What is the diagnosis of the psychosis. There is element of symptomatology base for our diagnosis and we go by the element of symptomatology to diagnose a patient and mainly we got to do the differentiated diagnosis between the neurosis and psychosis and if we reach the psychosis, you see functionable psychosis or not--- there is very interesting writing by Freud, paranoid Judge Schriber, the name of his work. Judge Schriber one of the Supreme Court Judge in Germany at that time. Freud analyze him, but he was functionable psychotic and acceptable.

Q Do you review reports that are submitted by correction officers on the ward of the patient?

A Yes.

Q Are these documents in the folders?

A Yes, I ask their opinion. They are twenty-four hours around the clock contact with the patient and team is starting from correction officer, nurses, psychologists, social worker and the team leader is psychiatrist.

Q Do you review the reports that they have submitted in the file?

A I mostly ask their verbal report when I come morning to my ward, and I ask them how was the night, what was the problem, how did they think about, and I got the nurse, I got the report from the nurse.

Q So if you are assigned to see three patients in a day, will you speak with correction officers in the specific ward, those respective wards before you conduct the evaluation?

A Not routine evaluation. This is the routine job of the daily ward round.

Q I am talking about the formal evaluation.

A No, it's the formal evaluation---evaluation is a different approach than the daily routine round.

Q What would your approach be in the formal evaluation?

A In formal evaluation, contact with the patient is between the patient and the psychiatris assess that his mental condition at the time of the examination and this is extremely important.

If I said I did not find this man is a suicidal, I may condemn by my practicing. But if I said at the time of my examination, patient do not reveal as a suicidal, it's a different ball game.

Because at the time of my examination, I couldn't find him suicidal. He may suicide after two hours. It's not in my bag. Lots of things may change in two hours of distance in human mind.

Q In conducting this formal evaluation, do you consult records that are submitted by---

A In general, yes.

Q How long is the normal formal evaluation time?

A It's depend of the doctor-patient relation and knowledge of each other. I mean, if I initially evaluated with my initial patient, I may easily give an hour. If it's an established relationship and knowledge, it's kind of mutual knowledge between certain individuals and psychiatrist, this may take a few minutes.

Q Do you submit all your formal evaluations to Dr. Sweeney for review?

A No, I don't submit for review to Dr. Sweeney because it could be, in the first place, ridiculous to ask him to do that. It's not a one-man job. His time limit is not permitted him even to perform one percent of every, but I believe every decision has to be signed and approved.

This is one of the procedure, administrative procedures by the chief psychiatrist and superintendent.

Q Where do you physically place the evaluation after you are finished with it?

A Wherever the situation permit it. If it's a routine evaluation, on the schedule, patient, ward 21. If patient is not able to come to ward 21, he is agitated, destructive or hostile, psychiatrists go where the patient is.

If there is an emergency restraining, patient couldn't come to ward 21, the doctor or doctors team be at the place of patient. Wherever the situation required. There is no rigid---

Q Where would you place the piece of paper that you write the evaluation on after you have completed the evaluation? Does it go back into the patient's folder?

A Every doctor has different way of

functioning. For instance, some doctors, they sit right away. They write on their note and they accumulate it one or two days. Then they go to their secretary, they dictate it.

My way of practicing, I immediately call to my secretary after evaluation, I dictated my note by telephone.

Has Dr. Sweeney ever called you up after you have completed an evaluation and said, "I disagree with your decision to retain a patient"?

MS. SLIVERMAN: Ms. Bloom earlier asked a question about does Dr. Sweeney review every evaluation, and I think that confused Dr. Sirman. I think you mean an evaluation that results in a decision to certify somebody out. I don't think he reviews every---

THE WITNESS: I understand what she means.

MR. GOETTEL: He did indicate that any action taken required approval of Dr. Sweeney. Consequently, the only major decision that you would call action, I would think, is the return of the prisoner to the prison.

MS. SLIVERMAN: But there could be an evaluation that just results in no change of his---

MR. GOETTEL: That is not what I would call any action that would require approval, so I didn't understand that that required Dr. Sweeney's approval.

THE WITNESS: No, your Honor. I am sorry. Every single decision in this hospital requires Dr. Sweeney's approval.

MR. GOETTEL: Does he actually have time to review all of the routine---

THE WITNESS: No, he won't. He go by what the psychiatrist say. No, he doesn't have time.

MR. GOETTEL: He is more likely to review an evaluation of an evaluation that calls for the return of the prisoner to prison?

THE WITNESS: Yes. Let me put it that way. Every discharge in this institution is the subject for Dr.

Sweeney approval, every discharge. Your question, I tell you, Dr. Sweeney tried to give me one of his, this will be smoke come out in this place because I know what I am doing and he knows what he is doing. I am not going---I am not even going to argue with him. I do what I think medically best on my knowledge to do.

Q You have never had the occasion where Dr. Sweeney called you up and said, "I disagree with your diagnosis to retain a patient, see him again"?

A There better won't be.

Q You testified that you had spoken with George Dunleavy on February 11, 1975.

A Correct.

Q Based upon reviewing Mr. Dunleavy's record, can you indicate to me when a retention order was issued ordering that he be retained at Matteawan State Hospital?

(Handing document to witness.)

Q I would like you to review this and indicate for me, if you can, what dates retention orders were issued ordering that Mr. Dunleavy be retained at Matteawan.

A You want me to read my own note?

Q Your notations.

A And the note which---January 24, '75?

Q I want you to read the notations in that record and indicate for me, if you can, when there were Court Orders that indicated that Mr. Dunleavy should be retained at Matteawan.

MS. SILVERMAN: Your Honor, I really have no objection to this except it's time consuming if it's just in the record.

MR. GOETTEL: You mean to have him read it out loud?

MS. SILVERMAN: If Ms. Bloom has a particular question---

Q I would like you to review it to yourself and just indicate to me what dates you find indicating that Mr. Dunleavy should be retained.

MS. SILVERMAN: Retention orders.

A I said here it's very simple for me. I said the only reason I retain him at this facility is because of his fear of prison. His discharge may be the subject for an administrative decision. I mean it's very clear that there is nothing of medical necessity.

The man is asking me that, "Please, doc, I appreciate it if you keep me here because I am afraid to go back to prison." He is making his time one way or the other. Doesn't make any difference for me, and I said well, why not, and I will refer the administration.

If they wanted to keep administratively, I mean not medical, they may keep---medically he is the subject to discharge right there.

Q On February 11th, then you indicated that Mr. Dunleavy should be retained at Matteawan, is that correct?

A What is my justification of this indication, do you mind to read for me please?

Q You state here his discharge may be a subject for administrative decision.

A That's right.

Q Did someone in administration communicate with you and indicate that Mr. Dunleavy should be retained?

A Yes, it was one of the lawyers, Mr. Charles Emmens, I think he is working for the inmates---how do you call this organization---

MS. SILVERMAN: Mental Health Service?

A Mental Health, that's right, and Mr. Dunleavy, he come with Mr. Charles Emmens to me and Charles told me that, "Well, why don't we keep him here, Dr. Sirman? He is doing---he is helping me," he said.

I mean, he was working in a law library and writing the papers for the patients or something, and, well I told over to them that not medical necessity to retain him. He is the subject to discharge, and I did put on my note, and I told them that if administration wanted to keep him, administrative purposes, not medical purposes, it's their bag. It's not my bag.

Medically, he is ready to go.

Q Had you had any other occasions where the administration have commented on whether or not individuals should be retained at Matteawan?

A Yes, we have some. We have some. We have some buffered zone like United Nation troop in Israel. Buffered zone inmates that they are really keeping, controlling the riots or bloody uprising and they are working for administration.

I think every prison, every institution have this kind of good inmates, we may say, which committee people, they are not overtly sick, but they are doing their time and they are helping to keep the place calm.

Q Let's just suppose that one of these

good inmates who is assisting the administration who the administration advises you should be kept at Matteawan becomes distruptive and decides not to assist the administration and not to keep the peace.

MS. SILVERMAN: I'm going to object to this question.

MR. GOETTEL: Overruled.

Q What would happen to that individual?

A Well, it's very simple. If the man is not needed medical treatment, in the first place, the doctors are the doctors. They are not peace officers. They consider medical need of the individual.

Even though if a doctor is ward prisoner in the enemy line during the war treated the enemy soldiers as their own nation. If he needed the treatment bad or good, we treat him. If he doesn't need the treatment, we really don't need additional problem. It's simple as this.

Q Let's say there's one individual like George Dunleavy where you have made the medical decision that he doesn't need the treatment.

The administration indicates to you that we should keep him around here because he's helping people in the law library.

Let's say that George Dunleavy follows a pattern of assisting the administration and inmates for a period of six months and he is perfectly capable of returning to prison.

Let's say that at the end of a six month period, he becomes very dispruptive and stops doing his work in library.

MS. SILVERMAN: I'm going to object to this question because it has no basis in the facts of this case.

MR. GOETTEL: It's stated as a hypothetical.

MS. SILVERMAN: Even though, I understand that a hypothetical has to have some relation to the ultimate proof or in the proof already put in and this was not the case of George Dunleavy.

MR. GOETTEL: I think she's asking here whether, when you are dealing with a patient who does not medically require retention and is being retained because of the social and administrative assistance he gives to the staff, whether he can forfeit his retention by failing in those functions.

MS. SILVERMAN: Then I would say that question has been asked and answered.

MR. GOETTEL: I don't think it has been answered. What is the answer to that?

A Well, I think---let's go to the theoretical level to argue the problem. I would have give some very simple example for you. If you wanted to go one of your private hospitals to have complete check-up, you got to obey your doctor's orders. For instance, doctor order you first thing, blood sugar the next morning and don't eat anything. Technician will come draw the blood out of your vein.

That's all doctor can tell you which you are paying him and you are paying $150.00 for a hospital room. If you sneak a few candy before they drawing blood of you, your own doctor tell you, "Listen, dear, if you go that way, you are discharged. We can't work on you."

That's a medical field. You have to look at doctor or you have to listen to doctor what they said. In this case, we may put this thing as a disruption. I don't understand what exactly you mean if the patient after six months disrupted. What you mean disrupted, mentally or disrupted---

Q That the patient ceased assisting the administration, stopped assisting inmates in the law library, stopped acting as a buffer zone.

A It is not disruption. I mean he is not disrupted at that time. If he is assisting the administration, that's his business. But I don't consider him as a disruptive patient.

Q Let's say he got into a fight. My question is this.

You have stated that normally a medical decision to retain or discharge a patient is a decided factor, is that correct?

A Come again please.

Q You have stated that normally the medical decision to retain or discharge a patient is the deciding factor in determining whether that patient stays or leaves.

A Determine is the patient mentally need the treatment or not.

Q You have also stated that sometimes that medical decision is overrided by administrative decisions that although an inmate might be mentally able to return to another institution, that inmate should be retained at Matteawan for some other reason.

A I wouldn't say overriding by administrative decision. I said it's the kind of suggestibility. I mean if I really wanted to discharge a certain inmate which is not required medical treatment, administration cannot foresee to hold him here if he do not wanted to discharge a certain inmate which I believe that he need medical psychiatric treatment.

Again, the same administration cannot force me to do against my willing.

Theoretically, if a man is mentally or medically not requiring any further treatment, it could be a subject to be discharge any time. For instance, I got ten new patients. I don't have room to put them, and I may discharge ten available patients out to open ten new rooms for my need.

Who could I discharge? Let's say who could be the ten. The ten will be the best candidates that medically they don't need any treatment.

Understand what I mean? You know, it's kind of demand and need.

Q If you could review this notation of October 8, 1974---

MS. SILVERMAN: Who are we on now?

MS. BLOOM: George Dunleavy.

A Yes. "Notice of request for court authorization to retain patient at Matteawan State Hospital under section 408 C.L. was today served on this patient."

Q What criteria are utilized in making decisions that a patient should be retained at Matteawan?

A Well, usually court goes with doctor's recommendation and patient's objection or acceptance. If a patient got his doctor and ask him that, "Please keep me here. I don't want to go back to prison. I wanted to stay here," well, for, I mean, if a doctor is a possibility to keep him here, why not.

I mean, he is serving the time.

Q Would a doctor keep someone here if they were not psychotic?

A Well, there are some not psychotic in Matteawan State Hospital and in other hospital. Everywhere. I mean it's one of the general rules which when--- I mean, I would say it's a mutual understanding. I wouldn't say why not. I mean, the man wanted to stay and he go to sanity hearing and he said he wanted to stay here.

Judge asking the doctors, "Do you wanted to keep him here? Do you have any contraindication?"

Doctor say no. Here we are court retention order for six month. The man stay.

Q Did you know George Dunleavy at that time in October of 1974?

A I know Dunleavy before that. I knew him very well.

Q Did you consider that his condition in 1974 was substantially similar to what it was in February of 1975?

A Dunleavy never have been mentally ill in my knowledge.

Q So his condition was basically the same?

A Yes.

Q You would agree it was proper to request authorization, court authorization to retain him in October of 1974?

MS. SILVERMAN: Objection.

MR. GOETTEL: What is the basis of the objection?

A Am I agreed?

MS. SILVERMAN: She asked him if it would be proper. Proper for what?

MS. BLOOM: Medically proper.

MR. GOETTEL: Rephrase the question.

Q In your opinion, do you agree with the medical decision that was made to request a retention of George Dunleavy?

A I didn't make this request. I don't know which doctor made it.

Q But, in your opinion, would you have made that request in October of 1974?

A It wasn't me, and I wouldn't speak for another doctor in the court retention order. I don't know. You may find somebody that ask court retention order in that progress note.

Q In your opinion, would you have requested that George Dunleavy be retained in October of 1974?

A I don't know how I will behave that time. I have to review my own evaluation. I can't answer that question now. I mean, if I was assigned to his psychiatrist at the time of the court retention order, I may answer your question very clearly. But it wasn't me. It was another psychiatrist. I don't think that is my place to answer for him.

Q Did you review the reports that that psychiatrist had submitted in making subsequent evaluations of Mr. Dunleavy?

A No, I didn't review.

Q You didn't review those evaluations in making your evaluation in February of 1975?

MS. SILVERMAN: I object to this question because I don't know what evaluations go into the retention orders. I don't know if there are different ones than are on the progress notes, and I think if Ms. Bloom can establish that these would have been available to the doctor exactly---as I say, I don't know what the process is when you apply to the court for a retention order. I don't know what papers go with that, and I don't know that these would be normally available.

MR. GOETTEL: I don't think you have established the connection between a retention order and the evaluation, if any.

Q Turning now to Hector Cruz, you indicated that you had evaluated Hector Cruz on October 20, 1975, is that correct?

A Yes.

Q Where was Hector Cruz when this evaluation was conducted?

A He was, as I remember, in ward 3, seclusion ward.

Q Was he in a strait jacket?

A No, he was in the seclusion.

Q What does that mean?

A That means he was in his room, single room and the door locks on it.

Q Were there any other doctors present while you conducted the evaluation?

A Yes, make a team evaluation.

Q How many doctors were present?

A I think it's four or five. I don't remember exactly.

Q Is it typical for four or five doctors to be present to conduct an evaluation, a formal evaluation of a patient?

A It's not typical. It's because it was the time that there wasn't any superintendent and there wasn't any chief psychiatrist in the hospital. I think Dr. Sweeney was out of his vacation and his ward physician did not wanted to take his responsibility all alone without his opinion.

We told that this will be better if we consult with the case among us and make our recommendation and we did consult about his case and everybody expresses opinion and we decided to see him and express or decided our opinion about him.

Q How long did the interview with Hector Cruz last?

A Maybe ten minutes, eight minutes. I don't know exactly.

Q What kinds of questions did you ask him?

A How do you feel, Mr. Cruz. Did you have a nightmare last night. I mean, I don't remember what kind of question. Maybe I ask him something else, but I don't remember now.

Q In your experience at Matteawan, have there been any other occasions where you conducted a group evaluation where four or five doctors---

A Yes, often.

Q How often would you say this occurs?

A It may arise at least ten or fifteen times a month. For instance, there is some legal procedure that required two psychiatrists' signature like parole board reports like transfer them hospital after they are conditional release. There are certain legalities requires minimum two psychiatrists.

Q Aside from those situations, how many times is there more than two doctors that conduct a formal evaluation of an individual before that individual is certified back to prison?

A I don't know how many times, but this may occur. This may occur. If the doctors---if the doctor of the service wanted to consultation, he is free to ask consultation any time he wanted to ask.

Q You indicated that at that time you felt Hector Cruz' psychosis was in remission. Did you feel that he had recovered from his mental illness?

A This is what in remission. Remission means recovered mental illness in the terminology. In the medical terminology, remission means recovered of mental illness.

Q Did you feel that there was a possibility that this remission of this psychosis might reappear if he was transferred to a different environment?

A Certainly might be or might not. I don't know, but there is always possibility potentiality.

Q In deciding to transfer someone back to prison, do you consider whether or not the prison atmosphere will induce this psychosis to reappear?

A I may discuss with you theoretically they may. Not only prison. Lots of discharge from the mental institution to their own home, sometimes they function perfectly. Sometimes the guy break out the fight with his wife. He go to boozing the bar and may kill somebody in the bar. How do I know? There's always possibilities and they always subject to---

Q Was it your opinion regarding Hector Cruz that he could adequately adjust to prison life?

A I cannot say exactly on the Hector Cruz. I am talking theoretically on in general mental population. Hector Cruz is one of this population. He may not or he may. Not only the prison. Prison is not---prison precipitated human stress, that's true. But sometimes his own home precipitates his mental stress more than the prison.

Q So you have no way of evaluating whether or not prison would change his mental condition?

A Until he break up. If he break up, we readmit again. We give our treatment, month, two months or three months in necessity. We discharge him again.

We have a patient is come and going back at least fifteen times. I mean, please notice that 1975 and 1975 mental hospitals don't carry backwards, means that they are not exiled.

They are active, the functioning mental institution. They take, they return, they take, they return in necessity of the treatment. But they won't keep them and they won't store the mentally ill patient for unlimited time.

Q Are you talking about civil hospitals now?

A I am talking for every mental hospital around the globe.

Q You indicated that the modern trend in psychiatry is to treat people on an out-patient basis?

A That's right.

Q Is the equivalent of the out-patient care available at most of the prison institutions?

A Supposedly, yes. Every prison has their medical bind, you know, if you follow the recent publication in New York State Mental Hygiene try to build seven sub-units in seven different prisons like a little seven Matteawan in the prisons, if they may find a qualified professional to do that and money.

Q Do you know specifically what kind of psychiatric care is available at the other institutions in the State, at the prison institutions?

A Well, just like psychiatric care in general hospital in the street. If the man break out some psychosis, I mean let's put it that way. If a man, without any reason, beat his wife, the first thing first, please get the man, bring to the emergency room.

MR. GOETTEL: Do you understand the question, doctor? I think what she's asking you is at any given prison and let's just take Attica as an example, if you are familiar with it, is there a psychiatrist on the staff of Attica full time?

THE WITNESS: Yes, especially in Attica there is two psychiatrists. One is Dr. Rubinstein. Another is Dr. Stamberg, I think and they are working for mental health.

Q Do you know how many inmates there are at Attica?

A Around two thousand, I guess. I don't know exactly number.

Q So that we have a patient-doctor ratio of two to---

MS. SILVERMAN: Let's not get into

that.

A It's a bad news, you know. Patient psychiatric ratio---

Q Are there two psychiatrists?

A Yes, that's too bad. It has to be twenty, but there is no budget and they can't hire more than this. I mean I am in the State, maximum possibilities and this institution needs minimum twenty psychiatrists to run this three hundred twenty patients and we are running with seven psychiatrists. That's the bad side of the story really, is bad.

Q Is the kind of treatment someone can get as an out-patient in a civil mental hospital the same as the kind of treatment an inmate can get at a prison, given the staffing problems?

MS. SILVERMAN: I'm going to object to this because I don't know what out-patient facility Ms. Bloom is referring to. I imagine there might be some in the United States that are worse than Attica. I don't know.

MS. BLOOM: Referring to whatever Dr. Sirman has generally referred to as being available and preferable.

A Well, it's really bad news, you know. In civil mental institutions suffer as the same was we are suffering for staffing. There is very big shortage of MD in general in United States. American medical schools are not enough to produce enough doctors. That's why they imported the foreigner doctors or they sent their boys to the foreign country for education.

The medical care in Canada and United States need at least triple qualified personnel and if you wanted to ask for the appointment for your private psychiatrist, got to wait three months. There is a big shortage especially in the State institutions.

Q Turning to Matthew Gully, you indicated that you evaluated him on October 20, 1975.

A Was it October 20, '75? Okay. I don't remember the date.

Q Where was he located when you conducted that interview?

A Yes, I remember, he was in ward 2 in restraining sheet.

Q Do you know how long he had been in a restraining sheet?

A I don't know. I think---I think at least eighteen hours or---I don't know exactly how long.

Q How many doctors were present?

A The same team.

Q The same group?

A Same group.

Q When are patients normally placed in restraining sheets at Matteawan?

A Restraining sheets means pacification or pacified an individual. Whenever they need to be pacified, there is two kinds of pacified, pacification.

One is mechanical pacification which is restraining sheets. The other is chemical pacification which is medication. If they found an individual in an agitated state, they pacify him mechanical restraining and they start to giving him medication to keep his pacification. They pacified him.

But I don't think that mechanical pacification, and I don't believe mechanical pacification should be more than two or three days.

MR. GOETTEL: What was the incident which led to Mr. Gully being placed in a pacification?

THE WITNESS: I don't know, sir.

MR. GOETTEL: Is it revealed in the record?

THE WITNESS: I don't know. I didn't see over there in the record.

MS. SILVERMAN: He asked you if it would be revealed in the record. If you looked in the record, could you tell?

THE WITNESS: I didn't see any. I didn't see any evidence in the record, but I think it was a fight or something. I don't know. It was something. It was some agitation was going on. As I remember---what was it?

I think it was a fight. They were fighting each other or some kind of thing or some kind of daily routine life of them, you know, and they always fight anyway. They always fight.

Q Would that fact that a patient is placed in a restraining sheet mean anything about whether or not that individual had recovered from illness or was getting worse?

A Well, that's a good question. You know, when if you are talking for a professional, if you ask me or yourself behavior, what is the fighting, actual violence. I would say if you see me in the actual violence, please lock me in, I am getting sick because it's not the behavior of education profession.

But if you ask a criminal what is the fighting, this is their daily routine life. This is their subculture.

They born in ghetto. They start to fight and they finish their life sometimes during some fight. I don't think there is anything to do with mental disease. It's a cultural---it's a social background. It's depend of the condition. It's depend of circumstances. If you see me, I am repeating again, like one of the inmates is here, they are fighting. Something wrong with me because we shouldn't fight that way, but these people here, they are all---I don't know, they are fighting night and day all the time, they are fighting.

Q So in your opinion, then the fact that Matthew Gully was fighting all the time was not really an aspect of a mental illness, but rather a---

A I strongly believe that that has nothing to do with mental illness because I have been working years back in the civil mental institution. I never see the amount of fighting in any mental institution like I have been observing in this institution.

If there is some relation with mental illness in general, statistics show in other hospitals the fighting is high. But it's not.

It's not mental---mentally ill patient, they don't fight, they are so helpless. Really, they don't fight.

Q Could agressive behavior be one manifestation of mental illness?

A Yes, it might be.

Q It could be?

A It could be.

Q Do you believe that in the case of Matthew Gully his aggressive behavior was a manifestation of mental illness?

A Well, I don't believe for him because regression is described by Freud very clearly. He said an army occupied different country like Napolean army. Let one troop in Germany, another troop in Austria, another troop in Italy and hit Russia.

But when he hit Russia, he doesn't have enough troops in his hand to fight massively. Then he pull back. He get troops. He reinforces. He pulls back. He gets the other troops. He reinforces. He pulls back. He gets the fresh troops on reinforce and reattack.

Regression is this. Mental regression is this. Freud explained that way. It's very logical.

The man---we all regress on and off in our life. We think that we are in stress and we stop and meditate and we think ourself. We put together and we readvance again.

Q In your opinion then, was Matthew Gully undergoing a regression?

A Not a psychotic regression. I think it's neurotic regression and in this case, it's not abnormal for his mental condition because Gully wasn't psychotic.

Q In your opinion, Gully was never psychotic while he was at Matteawan?

A Did I say that he has ever been---I don't recall. Did I say it in my note? I don't recall. I got to look my notes.

MS. SILVERMAN: I think his testimony was---

MR. GOETTEL: I believe his medical history indicates that he has been diagnosed as paranoid at some earlier period in his confinement.

MS. SILVERMAN: Acute paranoid

reaction.

MR. GOETTEL: And he claims to continually hear voices.

If, in fact he hears voices that are not there, is that a symptom of psychosis? Is that a psychosis reaction?

THE WITNESS: Yes, acute paranoid reaction or acute auditory hallucination, it's one of the elements of acute psychosis, but acute psychosis do not have any relation with grave mental illness like schizophrenia.

It's just impairment of the function or a related guilty feeling.

For instance, deeply depressed individual has been harassing his mother. Mother die and he feels so guilty he start to hear the voice of his mother which is accusing him, but this is not melancholia. This is mourning.

After a few days, the mourning will pass and individual turn to be a normal individual.

MR. GOETTEL: Mr. Gully testified

when he was here a month or so back that he was still hearing these voices which sounded like records playing.

Do you believe, in fact, that he is having this symptom or is it a malingering effort?

THE WITNESS: I think he is malingering, sir. I think he is malingering.

MR. GOETTEL: Have there not been occasions on which Mr. Gully had cut himself rather seriously with knives and other instruments?

THE WITNESS: Sir, they all cut themselves. Eighty percent of the inmates population cut themself, but it's very rare they actually kill themselves, because they scratch themselves to manipulate their environment or to ask attention. For this hallucination, I would give you very concrete example, LSD.

They guy having LSD and going on the trip, I wonder could we call them psychotic or not. They are seeing the vision. They are hearing the voices during the trip. I don't know in the legal sense if during the trip, they committed a crime and after three hours, the effect of LSD is gone, they come back to the normal condition, do we consider them temporarily insane or not.

I mean it's really---these questions that we really medically, we don't know what is going on in brain cells, what's going in there exactly.

Q In the clinical summary of Matthew Gully which is Exhibit B, it is stated that the reason for commitment is as follows: "History of depersonalization, depression, episodic outbursts of aggressive behavior, suicidal wishes, delusions of persecution, officers at Attica plan to kill him. May be mentally retarded."

In your judgement, would these characteristics classify him as psychotic or---

A Seems to be neurotic depressive reaction, yes, and reactional neurosis mostly or traumatic neurosis or war neurosis we call it which we saw in the soldiers. We saw in the troopers.

Q In your opinion, is he an appropriate person to have been placed at Matteawan given these symptoms?

A In that condition, yes.

Q He is?

A Yes.

Q Were these characteristics evident when you examined him on---

A That's all in remission. Yes, they were treated.

Q Turning to Luis Poveromo, you indicated that you spoke with Mr. Poveromo in January of 1975, that you had a formal evaluation of him.

A January 27th or 28th? I got two interviews with him.

MS. SILVERMAN: There's also one on the 31st, I believe.

Q Did you speak with him personally?

A Which date you are asking now?

Q I am speaking about January 27th.

A Yes, I spoke with him personally.

Q Your opinion at the end of the interview was that he should be retained, is that correct?

A It was deferred, yes. I ask for retain for certain period for further evaluation because I did believe during this interview that he was manipulating.

He was we said ritualistic obsessive compulsive symptomatology. Means that the guy, for instance, coming to the table and knocking two times the table and turning around and coming back and knocking again two times, not three times or one time. This is ritualistic.

While he was doing this during the interview, he give me impression that he is playing around, and I did retain, and I ordered to the staff watch him twenty-four hours and report to me what he is doing.

I mean, if he is real sick, he got to do this thing all the time. When he went back to the ward and he became playing the game poker or cards or laughing his head off means that he is manipulating the psychiatrist during interview.

Q Let's back up a couple of weeks. On January 9th of 1975, would you read the notation in the file?

A The same thing, this court authorization to retain the patient at Matteawan, yes.

Q What is the notation under January 17, 1975? Read that.

A You see, this means that---January 9 '75, "Notice of request for court authorization to retain patient at Matteawan State Hospital under section 408

Correctional Law was today served on this patient."

It means that the clerk served a certain certificate to the patient and ask him does he want to go to court or not. If the patient doesn't want to stay in Matteawan State Hospital, if he wanted to go to the prison, and if his psychiatrist disagree with him and the psychiatrist wanted to keep him in the Matteawan State Hospital, then they go to court to ask decision of the judge.

If the patient wanted to stay in Matteawan State Hospital, he doesn't want to hear the name of the court because I think he is happy where he is, doesn't want to bother. He doesn't want to move and doesn't want to go, and I think his doctor at that time---I don't know who is his doctor, Julius Majechewsky, you got to ask him his opinion and wanted to retain him, no problem to go to the court.

Q But, the notation on January 17th '75 indicates the court retention order was signed at that time.

A We made this request next day even court retention order. Court retention order doesn't mean that we are obliged to keep the patient.

Q I understand that, but does it mean

that someone in this hospital has made an application to the court to retain the patient?

A That's right.

MS. SILVERMAN: I'm going to object to this, your Honor because the law requires that these retention orders be made periodically. Ms. Bloom is trying to imply that this was done because some doctor absolutely at that point decided, but I think that it's automatic.

THE WITNESS: It's periodic. That's a matter for argument.

Q Now, you evaluated Mr. Poveromo on January 28, 1975 also, correct?

A That's right, correct.

Q Can you explain why you conducted evaluations on two subsequent days?

A I told, I explained. I thought I explained a few minutes ago. I said my impression the first interview January 27, the man was manipulating with his ritualistic repetitive compulsive behavior, and I ask constant twenty-four hours of around the clock observation how does he behave in the ward, and I have been reported that he was behaving perfectly.

Q On the 27th of January, you indicated at one point in this evaluation, "He is a difficult patient and I don't think he will make it in a regular correctional facility."

Is that based upon the games that he was playing with you?

A Yes.

Q Or your understanding of what was---

A I think he was playing the game with me, and I told that I feel that he is manipulating me which they do it very often, and I did explain on my note of 28th what did I decide about him.

Do you mind to read please?

Q The recommendation?

A No, entire note because it's explain all the situation.

Q I see that here, and I think that you have explained it.

MS. SILVERMAN: It's in the record, doctor.

Q Turning to the recommendation you made on January 28, 1975, you indicate here, you state, "Patient is a troublemaker and MSH has no more to offer. Return to correctional facility."

What do you mean by the statement "Patient is a troublemaker"?

A I did explain again during our first questioning about the personality disorders. If I remember, my diagnosis is again explosive personality or anti-social personality disorder, one of them. What did I put there, do you mind tell me please?

MS. SILVERMAN: Would you let the doctor see that?

A Anti-social personality disorder, one of symptamotology of his diagnosis. They are all troublemakers. That's why they are offensive. They end up to jail.

Q You also indicated on direct examination that in February of 1975, Mr. Poveromo was readmitted to Matteawan. Is that correct?

A I wasn't with you.

Q You indicated on direct examination that in February of '75, Mr. Poveromo was readmitted to Matteawan.

A Yes.

Q You stated that you felt at that time that he still was not mentally ill, that he was playing games.

A Yes, I agree with the doctor. I think it was Dr. Schaeffer admitted him. I agree with his diagnosis. I didn't see him that time. I am telling you now that, you know, as I know his background, I agree with Dr. Schaeffer even though I didn't see him.

Q Why was Mr. Poveromo retained at Matteawan if it was determined that he still is not mentally ill?

A I don't know.

Q You had no further contact with him?

A No, I don't know.

Q In your opinion, is a patient's medication normally increased because the patient has become more disturbed in some way? Is there any correlation between an increase in medication---

A And the disturbance of the patient?

Q Yes.

A Yes, might be. Might be. In general rule, if a disturbance is one of the predominant factors of his behavior, medication must be adjusted toward it.

Q Does an adjustment of medication have anything to do with an increase or decrease in mental illness?

A Well, you see, there is a---it's double cutters knife. For instance, phenothiazine is one of drugs which one of the most effective anti-psychotic drugs effected to human being system in mid brain by controlling the psychotic behavior, at the same time controlling non psychotic agressivity. This is interesting part, but don't be able there to ask me why. I don't think anybody knows in this world that why, what is it mean. I don't know.

Q Were you involved at all in the decision regarding Matthew Gully to increase his medication on October 20, 1975 from the level it had been on October 9, 1975? Were you involved in that decision to increase his medication?

A No. I don't remember.

Q How are patients punished at Matteawan if they get into fights or misbehave in some way?

A Patient not punished in Matteawan. There is no punishment in Matteawan.

Q What do you do with a patient who continuously is disruptive?

A Well, we got to live with them. I don't believe any punishment in mental institution. Matteawan is different than prison. They punish in prison. They lock him three months in the cell or something like that. But I don't believe there is any punishment in Matteawan.

Q So there is no action taken?

A You know, we isolated him for maybe twenty-four hours. We put him in the room. I mean it's single private room or they stay quiet there, and next day we will send him back to their own ward.

If they want to fight again, we split them up again. We send to the different ward and why they fight so much, it's the biggest problem that I don't want to mention the main reason in this court, because it's not the place to mention. But they fight.

Q With some patients, is their continued aggressive behavior a reason that they should be retained at Matteawan?

A Idealistically, every aggressive behavior, continuously aggressive behavior individual must be the subject of kind of psychiatric assessment. But I said idealistically. I don't believe the United States can afford it. This is idealistic financial responsibility and neither other countries.

MS. BLOOM: I have no further questions.

MR. GOETTEL: I have a few questions.

EXAMINATION BY MR. GOETTEL:

Q In discussing the evaluation that is made before deciding to return a patient to the prison, it was described as certifying them back to prison. The word certify has a legal connotation which describes the process of adjudicating someone as requiring admission to a mental hospital, and I'm sure you are familiar with the certification procedure, the outside psychiatrists, the judge and all that goes with it, including assignment of counsel.

It's a rather formal, involved procedure, certification. Yet, as I understand your description, that certification back to prison is usually made by a single doctor based upon a relatively brief interview plus his review of the patient's records.

Is that correct?

A This is correct. But I would say, your Honor, his decertification, I think we used the word of certification wrong. We should use decertification.

Q Even taken as decertification, it's a much more informal procedure than the kind of procedure which brings someone into the institution.

A That's right. Certification in this sense, in the legality of the certification means involuntary, involuntary commitment. That's why we require two psychiatrists and judge order. This is involuntary commitment.

But if somebody goes to one of the private mental hospitals like the house here in our neighborhood, they don't need this kind of procedure because they go there voluntarily.

Q The point I am leading up to is this. You have commented on the difficulty of being certain as to a patient's actual mental state and you have commented the possibility that someone would appear perfectly fine to you and then they might commit suicide a couple of hours later.

A That's right.

Q Accepting that to be the case, how can you say with any reasonable medical certainty, based on a brief interview, that, in fact, the patient has sufficiently recovered to be decertified and sent back to prison?

A Sir, that's a very good question. I had experience not exactly the suicidal patient, but some different way. Working in emergency room, a patient come by himself walking in and asking some help for chest pain. We got the patient in. We put electrocardiography. We make some analysis and everything is normal. We couldn't find any myocardial infarctions or coronary occlusions.

We say to the patient, "Well, go back home and relax for a week and come to see me after a week." Patient fell down right on the step of emergency room and he died. What could be the responsibility of medicine, of doctor? I mean, it's a legal question. I don't know.

Q Let me put this to you. The great number of Plaintiffs involved in this suit have fallen into a pattern which can be described roughly as follows: They are brought into Matteawan for different reasons in differing backgrounds.

While at Matteawan, they have exhibited aggressive, hostile behavior. Most of them have been, as you phrase it, decertified and returned to prison. At the prison, within the period of a month or so and because of violent episodes, the prison psychiatrist or whoever the prison used, has decided that the person is still, in fact, psychotic and in need of further treatment at Matteawan and they come right back to Matteawan where, as I get the impression from Dr. Sweeney and from yourself, you don't believe that they have any need to be here.

Now, this poses either the problem that

these patients are successfully fooling psychiatrists at the prison or there is a bonafide dispute between the outside psychiatrists and the Matteawan psychiatrists as to the need for treatment for persons exhibiting extremely aggressive behavior.

A That's really---I have been thinking a long time what's going on and what is the fundamental problem. Are the patients or inmates manipulating the prison psychiatrists or psychiatrists in Matteawan right here have been under untolerable demand and if it is so, Matteawan has to be at least ten times larger than what it is to give adequate time and evaluation for all those demands.

Q There is no question in your mind that the financial restrictions and the number of patients you can adequately handle does put a pressure on you to get rid of any borderline patient who could possibly go back to prison?

A Certainly there is justification for this. Otherwise---maybe prison psychiatrists is right, too. Maybe we should give really for this borderline cases more time and more attention. But at that time---I mean today, Matteawan is functioning almost impossibilities.

We don't even have an x-ray machine here, and I was writing to the department since last four years to buy a new x-ray machine and here we are, we never get x-ray machine in this place.

We don't even have an adequate staff and we were fighting to get the staffing and they were keeping cutting our budget and they lay off the staffing. I mean, we are the loser in this fight. What could we do?

I prefer personally to keep those guys if I could keep them, if I have a possibility to keep them longer and because one way or the other, they are in prison, Matteawan or in prison, and we are not restricting their freedom. They are making their time.

Why we shouldn't keep them longer here if we could. If I have a thousand fences in this hospital, if I have enough staff and enough budget to answer that question, I even like to make a research and write an article about it.

Q One Plaintiff who doesn't fall in the pattern I have just described, one who seems quite different from the others is Mr. Dunleavy, and you have mentioned that he told you he suffers from claustrophobia.

Does claustrophobia qualify as a mental illness?

A I don't---let me answer your direct question because there is a direct question there. Yes, claustrophobia is one of the symptomatology of the neurosis. But is the neurosis our mental illness? If neurosis is mental illness, ninety percent of the country are neurotic and we can't treat---we have to treat ninety percent of the population in general in mental institution.

That's why we don't consider neurosis as a mental illness and we require hospitalization. If they had money, they may get their private psychiatrist, go on the couch and there is different treatment for them. We treat them.

But the claustrophobia, I like you in instructed me, judge, how could you put claustrophobia together in the prison life? Prison means claustrophobia right from the beginning.

Q I was coming to that next, that claustrophobia may be a relatively insignificant neurosis for the average person in civilian life. It would seem to be an extremely serious thing for, let us say, somebody assigned to submarine duty.

A That's right.

Q He could have a complete breakdown if subjected to submarines while actually suffering from claustrophobia. Incidentally, do you think that Mr.

Dunleavy is genuinely claustrophobic or is he malingering?

A No, he is malingering. Mr. Dunleavy had a background like---like a professional with the knowledge, he could be the president of one of the countries. He could be the best politician or something else and really those guys are---

Q If you had a genuine claustrophobic with a serious degree of claustrophobia, even though it may be just a neurosis, do you think that person belongs in a maximum security prison where they will be under fairly tight restraints?

A No, sir. Genuine claustrophobia display typical clinical symptomatology which one of this symptomatology is hyperventilation as a result of their excessive anxiety. Hyperventilation creates disturbance of acid base, disbalance in the blood serum which may develop very serious acidosis and coma even. But I never knew none of the symptamotology among Mr. Dunleavy.

Q Then with a true claustrophobic, your alternatives would be either to put him in a minimum security type arrangement or to keep him here in the hospital?

A That's right.

Q You said earlier that you never evaluate a patient for purposes of sending him back to prison. In other words, that you wouldn't have an evaluation for purposes of determining decertification and that it just occurs during the course of a routine evaluation.

Suppose you found a patient who had done something quite remarkable, let us say he had planned a very involved and brilliant escape plan.

Would that not suggest to you immediately that he was not as psychotic as he was pretending to be or otherwise he couldn't have planned something quite so brilliant and would that not lead to an immediate evaluation for purposes of decertification?

A Your Honor, I did evaluate him psychiatrically. As you mentioned, if a man is a competent to prepare perfect escape plan and put this plan in activity, I consider him perfectly competent. I consider him not psychotic. I consider him a man doing what he is supposed to do. I mean, one of the duties of the life term prisoner is to escape. He is doing his job, and I refer to the security.

I don't know what security do, but I give my report that the man is not mentally ill.

Q Incidentally, you said earlier that you considered at least in the framework of mental illness, remission as being recovery.

In the area of physical illness, say for example someone with leukemia, he could be in the state of remission, but he will still have the leukemia and he's still almost certainly to be on his way to dying from it.

You wouldn't say remission and recovery was synonymous in physical medicine, would you?

A No. In psychiatry, especially we don't speak for cure or we don't speak of complete recovery, but in other field of medicine, we may speak for cure.

For instance, an appendectomy is total cure. We remove his appendix, we cure him. But as you say in blood disorders, leukemia, while we are treating leukemia, we are harassing the other part of the body by using nitrogen mustard. We are harassing the other cells of the body and most of the time we are not succeeding to cure him, but we are establishing sometimes of the critical crisis of the leukemia which arise from chills, some painfull crisis, sweating, toxication, infection.

We may control those little things, but we cannot control entire disease. Okay.

In mental disease, almost simpler some case of mental disease. But in remission, that's why I never use the word of cure. I never pretend to cure mental illness. I would say remission. I would say therapeutic effect. They may come back again, come back again.

Q So that when you say that a mental patient has recovered, what you mean is that the symptomatology is temporarily disappeared, it may or may not return at a future time?

A That's right. My personal opinion in mental disease today, mental disease talking to real mental disease is an organic disease. It's a biochemical disease and we don't know the effect of---we don't know the reason exactly, but we have the evidence.

When I give LSD, how come LSD created wonderful visual, colored vision and audio hallucination, individual hearing the voices.

Then certainly there is a change in the neuron and cortex of the cerebral. This case of LSD, if I treated them anti-psychotic drugs like thorazine, I treated their symptomatology and they won't be any more, they won't be any more delusional or hallucinatory.

Vice versa, amphetamine, amphetamine may create typical acute paranoid schizophrenia. The man becomes completely persecute and he believe everybody is after him. He believe that they want to poison him.

He become very much agitated and sometimes picture become irreversible, complete brain damage. We cannot treat him.

Here again, what's going on really inside of the neuron, that's biochemistry, body organic.

Q Is it not possible that serious mental illness has an organic pathology that medical science simply hasn't discovered to date?

A That's right, sir.

MR. GOETTEL: I have no further questions.

RE-DIRECT EXAMINATION BY MS. SILVERMAN:

Q Dr. Sirman, did you know Hector Cruz prior to October 20, 1975?

A Yes, I know him.

Q Did you know Matthew Gully prior to October 1975?

A Yes, I know him.

Q How did you know them?

A Well---

Q How did you come to know them?

A Well, most of the time when I was on call, the nurse used to call me and ask for sleeping pills for those guys, and I think from beginning I gave them some sleeping pills and then I reached the point that why are they really asking for sleeping pills every night.

I went to speak with them for different times, different occasions to stop giving them any kind of hypnotic or analgesic.

We sit and chat on and off with them and I try to give them short term psychotherapy, but they keep asking until the last time.

Q You state earlier that there was fighting on the wards. What does cause the fighting on the wards, if you know, in part?

A I don't know the reason, but I know in general what does cause the fighting in the institution.

MR. GOETTEL: What, in general, causes it?

THE WITNESS: It's almost actual jealousy. It's hard to prove it, but it's our feeling.

MR. GOETTEL: You think it's that widespread, homosexual jealousy?

THE WITNESS: I'm afraid so. It's hard to prove it.

MR. GOETTEL: Why should you have a high concentration of homosexuals here in Matteawan as opposed to any other all-male institution?

THE WITNESS: Everywhere. All the prison suffer the same problem.

Q Is there anything about the particular physical set up of Matteawan which permits individuals or inmates to engage in homosexual activity?

A Any evidence?

Q Is there anything about the physical layout of the arrangements at Matteawan as opposed to a prison which would lead to a greater degreee of homosexuality here than anywhere else?

A No, our interdepartmental relation revealed that every prison has the same problem.

Q What I meant was what are the living arrangements at Matteawan? How do inmates live? Do they live in individual units or do they live on a ward?

A They live on the wards, and I mean they are not supposed to do this. If officer got them in this activity, they stop them. But I tell you my own experience when I interview with them, they verbalize. They told me the problem, what this is, and there is---but I just reported to the department what I heard from the interview. But I don't have any proof. I don't have any incident.

Q I just meant as a psychiatrist and in your medical opinion, if there is a propensity toward homosexuality in a prison setting, would that propensity become more overt in quarters where the inmates are housed on wards rather than each confined to his individual cell?

A Well, in the first place---now, this is another altogether subject. I said homosexuality. But according American Psychiatric Association, the last report homosexuality is not considered as a mental illness.

Again, when I said homosexuality, there is two kinds of homosexuality. One, by the identification, sexual identification of the individual. He chose or she chose to be a homosexual. But another is forced homosexuality. The man is married, got children. Here he is in prison for a lifetime and he is a subject for abuse or he abuse somebody else for his sexual need.

I mean, psychiatrically, he has not identified himself as a homosexual, but he act homosexually by obligation in prison. Every prison around the state suffer for the same problem.

Q Would that mean to say that if this particular individual were on the streets, he would no longer participate in any homosexual behavior?

A I don't believe so.

Q He would revert to his prior heterosexual---

A I don't believe so. He never have been homosexual in the street. He was the father of a family or had a girl friend or something. He never practiced homosexuality.

Q Just turning now to a different point which is not whether homosexuality is a mental illness or not, but just whether, in your opinion, as a psychiatrist, given close quarters or prison settings where homosexuality is a problem, would that problem become a greater problem if the living arrangements were open wards as opposed to individual living units?

A I don't believe that even individual living quarters will be the problem because in prison, they have individual living quarters and homosexual activity is going on as the as Matteawan because this is sexual urge, does not come from the cell or being in open dormitory.

MS. SILVERMAN: I have no further questions.

RE-CROSS EXAMINATION BY MS. BLOOM:

Q Dr. Sirman, are you familiar with George Dunleavy's psychiatric history?

A I think George Dunleavy has been all his life in the reformatory, raised in reformatory and he has been very much so rejected starting from his own family.

Q Do you know if he has been in any other mental institutions?

A I don't recall.

MS. BLOOM: That's all.

MR. GOETTEL: You may be excused.

(Whereupon the witness was excused and withdrew.)

MS. SILVERMAN: May I suggest we move ahead with Mr. Mitchell since he is here?

oOo

GEORGE MITCHELL,

after having been duly sworn, assumed his seat as a witness, was examined and testified as follows:

DIRECT EXAMINATION BY MS. BLOOM:

Q What is your age?

A Thirty-nine.

Q Where are you currently incarcerated?

A Matteawan.

Q In 1973, were you convicted of a crime?

A I was.

Q What was that crime?

A Attempt murder.

Q What sentence did you receive?

A Zero to fifteen.

Q Where were you originally incarcerated?

A Greenhaven Correctional Facility.

Q How long did you stay there?

A Approximately two weeks, at which time I was transferred to Sing Sing for another fifteen days and about thirty days I spent at Sing Sing, and I was transferred to Attica.

Q When did you arrive at Attica approximately?

A Around October of '73, I think.

Q Did you have any disciplinary problems while you were at Attica?

A I had a great many disciplinary problems. I had---

MS. SILVERMAN: I object to this. I don't see the relevancy.

MS. BLOOM: It's relevant to manifestation of his mental condition while he was at Attica.

MR. GOETTEL: I don't know that all disciplinary problems have to do with---

MS. BLOOM: It seems to me that---

MR. GOETTEL: I will allow it. We will see where it goes.

A I was having a great many mental problems between the fact that I was having trouble adjusting to the cells, condition of the cells, being locked in a cell and harassment from correctional personnel.

So I got into a lot of fights with correctional personnel and first was being put in segregation.

Q When were you put in segregation?

A About June.

Q Of 1974?

A '74.

Q Where were you placed? Will you describe the physical set up of the segregation?

A Well, it was an isolated cell, stripped cell it's called. You have a mattress, sink and toilet and you are denied all other implements or anything. You are not allowed to have anything in the cell, but yourself and the mattress.

Q Did you receive medication?

A At first, no. But as my problems started to increase, I was having---hearing voices and seeing visions, and I couldn't sleep, and I was eventually seen by a psychiatrist and he prescribed thorazine medication three times a day for me.

Q How often did you see that doctor?

A Maybe once or twice a week sometimes.

Q How long did you stay in segregation?

A Eight months.

Q Where did you go from there?

A I was transferred to Matteawan---not the first time.

Q When were you transferred, do you remember the month?

A I can't remember. It was September 3rd, I think, September 3rd of '74

Q Will you describe the conditions at Matteawan when you arrived here?

A Matteawan is an open ward policy which lessens a lot of the pressure that you have because you're not, you know, locked in a cell twenty-four hours a day or twenty-two hours a day and other than that, you sit at a table and you get medication three or four times a day.

You watch T.V. and that's just about it in terms of activity. But the fact that you are on open ward is, in my case anyway, it was lessening my problem. It didn't cure my problem, but it lessened the pressures that drove me to do things, you know, the way I reacted to being locked up in a cell.

Q Did there come a time in October of 1974 when you requested to leave Matteawan?

A I did one day. I approached the nurse, and I told her I wanted to go back to prison and she, in turn, called the doctor, and I was called up for evaluation, building 21.

Q Would you describe the nature of the interview you had with the doctor?

A Well, I was called up by Dr. Cakir and he gave me the---one of the standard questions he asked me, how old I was, did I know the date and the month and how did I feel, and I answered those questions and he said, "You want to go back to prison?"

I said, "Yes," and he said, "Okay. We'll send you," and that was it.

Q Where did you go?

A I was sent to Clinton.

Q Where were you placed in Clinton?

A I was placed in segregation for the first two days I was there until I seen a doctor and then after I saw the doctor, he---they have two types of segregation. They have initial segregation where you were like locked in a cell until you are seen by the psychiatrist.

You are seen by a psychiatrist on weekends and after I had seen him, he evaluated me and he decided I should be put in isolation until I went back to Matteawan.

He took me upstairs and put me in an observation cell.

Q How long did you stay there?

A A total of four days.

Q Did you receive medication while you were there?

A Yes, I did.

Q Where did you go from Clinton?

A I was sent to D & E.

Q How long did you stay in D & E?

A About three weeks.

Q Where did you go from there?

A From D & E, I was transferred back to Matteawan after I had seen a psychiatrist from the street.

Q What month would that be?

A Around December.

Q December 1974?

A December '74, yes.

Q While you were at Matteawan, how often were you evaulated by the doctor?

A Well, it was very inconsistent. It's hard for me to give you exact dates because they would call me maybe twice this month and like for the next two months I wouldn't see them at all. So I don't know really how I can say how often.

Q Were you seen by the same doctor each time?

A No, I have seen---I have been seen by Dr.

Cakir. I have been seen by Dr. Feldman. I have been seen by Dr. Majechewsky. I have been seen by Dr. factora.

Q In July of 1975, were you placed on the jail ward?

A I was placed on a jail ward because it was generally thought that I was in a state of mind where I would perhaps do something to myself or someone else. I was kind of upset, and I was placed on the jail ward. It was self protection more or less.

Q Did you continue having the same problems while you were on the jail ward?

A They lessened somewhat, but they, you know, they returned and I was placed again on the jail ward, but this time I was placed on the jail ward because they transferred me to ward 6. It's kind of a punitive ward. That's the ward that's described for aggressive patients and patients who have trouble adjusting.

Q When were you placed there?

A This was approximately in July or September. I don't recall exactly.

Q Were you on that ward in October of 1975?

A I was.

Q On or about October 10th of 1975, were you evaluated by a doctor?

A I was evaluated by Dr. Factora. I was called up, and I was asked approximately the same questions that Dr. Cakir had asked me previously, did I know the date of the month, how old am I and the time of day, and how was I feeling, and I answered negatively I think most of them.

Anyway, I was told at the conclusion of the evaluation that, "Okay, I'll see you," and it was left like that. I wasn't told anything else until I was sent back to the ward.

Q What happened on October 17th of 1975?

A Well, in the afternoon, I was told by a correction officer that I was being transferred back to prison---

MS. SILVERMAN: I'm going to object to this testimony. The record shows that Mr. Mitchell was certified back to prison on October 10, 1975 which was seven days prior to this incident.

MS. BLOOM: Mr. Mitchell was at Matteawan on October 17, 1975.

MS. SILVERMAN: I thought your claim was that some altercation led to his discharge out. He's never been discharged out.

MS. BLOOM: There's no testimony to that affect.

MR. GOETTEL: Just that he was told that he was going to be returned to prison.

MS. SILVERMAN: By whom?

MS. BLOOM: Correction officer.

MS. SILVERMAN: I'm going to object to that testimony unless you can identify the correction officer.

MR. GOETTEL: Do you know who the correction officer was?

THE WITNESS: Officer Dushane.

Q What happened after you were told this? How did you react?

A Well, I can't really say because I kind of lost touch with reality, I guess you would term it, because I became involved in a general altercation and there was a lot of---you know, there was a fight, a lot of correction officers involved and other inmates, and I kind of blacked out and my memory---the only thing I can remember real clearly is waking up in the sheet on ward 2. I was placed in the restraining sheet, and I was

Q It is the same?

A It is the same with the other wards. There is no difference in layout. Ward 6 is similar to any other ward in the hospital.

Q Are individuals who exhibit more aggressive behavior normally sent to ward 6?

A What I know, in some other wards, they have aggressive patients, too. In fact, if patients act out, they are sent to ward 3 for seclusion. So I don't know whether ward 6 is a special ward for acting out, for aggressive or violent behavior.

MR. GOETTEL: I should tell you, doctor, that Dr. Sweeney testified that ward 6 was a place where they put the troublemakers.

THE WITNESS: Well, maybe---he has been here longer than I am and he knows that. Maybe he is aware that this ward is for that.

MR. GOETTEL: They haven't so advised you, at any rate?

THE WITNESS: No.

Q Now, Dr. Factora, turning your attention to Matthew Gully, you were involved in evaluation of

Matthew Gully on October 9th, I believe, is that correct?

A (Witness nods head.)

Q Your decision at the end of that interview was to retain him?

A Yes.

Q What was the basis of your decision?

A He mentioned to me that he didn't want to go back to prison. His fear of his life, and I felt he was very---his behavior is unpredictable, so to maintain a therapeutic relationship, I retained him.

Q How often did you normally see Matthew Gully for an evaluation? How would these evaluations be scheduled?

A The procedure is they come up with a list every day.

Q Who comes up with a list?

A Ward 21. They have the list there of who is going to be evaluated and the doctors go up there at 9:00, 9:30 in the morning and then we have a list and then we see them one by one, three patients a day.

Q Do you know who prepares this list?

A I would say the administration, other people.

Q You also indicated that you saw Mr. Gully on October 20 of 1975.

A Yes.

Q Would you normally see patients every few weeks?

A Some patients are seen---let's say one week after, some patients are reviewed a week after and some of them are like---they are evaluated on this date after two weeks. They are also evaluated. In other words, it's a normal procedure. I have seen patients within a span of ten days.

Q Did you make a particular request to evaluate Mr. Gully within this two-week period?

A You mean---

Q From the 9th to the 20th.

A Request the administration?

Q Yes, did you feel that an evaluation was appropriate within this two-week period?

A I didn't get you.

Q Did you request that another evaluation be conducted on the 20th?

A No.

Q This was something that the administration scheduled?

A Yes.

Q Did anyone contact you after you made the evaluation on the 9th of October regarding whether or not this was a valid finding and a valid recommendation?

A No.

Q Specifically, did Dr. Sweeney contact you regarding your decision to retain Matthew Gully on October 9th?

A No.

Q In the evaluation of October 20, 1975, you indicated about two thirds of the way down the page, the following: "The patient was last evaluated on October 9, 1975. Since then, his condition seems to be the same except on one occasion he was involved in an unpleasant incident."

Can you expand upon what you meant by that statement?

A Well, I was referring to my evaluation on October 9th, speech was coherent, relevant, all he answered in all spheres, no evidence of memory impairment, intellectual function was normal, judgement inadequate, unpredictable behavior.

Q What were you referring to when you stated that he was involved in an unpleasant incident? This is on the October 20th evaluation.

A I think he had been involved in many several incidents. I could have read maybe along the evaluations in the other papers about this because I think he is involved in several incidents which led me to say his behavior is unpredictable.

MR. GOETTEL: What do you mean by incidents, doctor?

THE WITNESS: I think in the charts---well, normally in the records of the patients, we have the past record. It would come like this, September 23, use of physical force.

This is an incident and some of the records maybe date back to August or July or last year. Then you can read whether this patient has had incidents.

MR. GOETTEL: Generally speaking, when you say incidents, are you referring to violent behavior and aggressive behavior?

THE WITNESS: Unpleasant incidents, I base it on suicidal attempts, homicidal attempts,fights, arguments.

Generally I base my statem nt on those.

MR. GOETTEL: By incidents, then you mean hostile behavior either directed at others or at themself, destructive behavior?

THE WITNESS: Right, yes.

Q Directing your attention to Plaintiff's Exhibit 1 regarding Matthew Gully, would you review these three pages?

Could that be part of the unpleasant incident that you are referring to in the evaluation of October 20th, that write-up of an unpleasant incident?

A I don't know. It would---usually they have reports on the paper or on the chart of the incident the patient has incurred. I don't know.

Q Now, looking at the evaluation that you wrote up of the evaluation on October 9th and comparing it with that done on October 20th, the wording appears almost identical except for that phrase "He was involved in an unpleasant incident."

It's not identical, but it's very similar. Can you describe the change in Mr. Gully's behavior that you noticed during the interview that caused you to make a decision to certify him?

A Which one, October 20?

Q Yes.

A Say that again please.

Q When I read the evaluation done on October 9th and compare that with the evaluation done on October 20th, the language seems substantially similar except for the notation that Mr. Gully was involved in an unpleasant incident.

I would like you to explain to us how his condition changed in that period of time.

A In terms of mental---

Q Mental condition.

A Well, on October 9, I didn't see him as having signs and symptoms of psychosis. I didn't see any signs and symptoms of psychosis on October 20th.

Behavior wise, I would---I must have missed any of the records. I mean if there are records that have been in here, I could have read it and maybe I would have said had been involved in previous incidents or, you know---I don't know if I can---

MR. GOETTEL: I don't think you follow her question, doctor.

MS. SILVERMAN: T think that's because the question, Ms. Bloom assumed that the doctor---the doctor didn't necessarily say there was a difference between October 9th.

MR. GOETTEL: I think what Ms. Bloom is getting at is that on October 9th you interviewed the patient, you reviewed his records and you decided that he should be retained as a patient.

THE WITNESS: Yes.

MR. GOETTEL: Eleven days later, without having Dr. Sweeney speak to you or tell you you had made an error and with nothing else changed except for the fact that Mr. Gully had been an incident, you determined that he was suitable for release, return to prison.

She is asking you on what you could base this change of opinion. If it was not Dr. Sweeney telling you to change your mind, she is suggesting perhaps the incident which occurred in the interim made you think he was ready for release.

Am I correct that that is the

point you are driving at?

MS. BLOOM: That's basically it.

A Now, I get the question clearly. This October 20 evaluation was done by the staff, and I agreed with their opinion and my knowledge of the patient, as I know him, as my patient on the ward. I agreed with their opinion that the patient is ready to go back to prison. In other words, we decided as I have mentioned--- he was seen by the medical staff, and I agreed with their decision because I know the patient, too, that he is free of psychosis and he is ready to be certified.

Q What made you change your mind between October 9th and October 20th?

A Well---

MS. SILVERMAN: I'm going to object to that question. I think the question is---

MR. GOETTEL: Let her ask it in terms of what made you change your opinion as to whether he was prepared for return to prison.

A On October 9, he was not psychotic, no signs or symptoms of psychosis and he didn't want to go back to prison because he feared for his life, and I have some quotes here which he mentioned, "I don't want my life to be in danger. I'd rather stay here."

I retained him because he really didn't want to go back to prison, because of that. On October 20, we decided as the medical staff, as they interviewed the patient, I concurred with their findings with the decision because I know the patient, too, that he is not psychotic, he is not schizophrenic.

Q How many people interviewed Mr. Gully on October 20?

A Dr. Cakir was there, Dr. Sirman, Dr. Neuremburg---we all went to see the patient as far as I can remember.

Q Was it typical for four or five doctors to evaluate a patient?

A You mean an every day happening?

Q Right.

A No.

Q Why was the decision made to have more than one person?

A We had made decisions as a staff. There are some decisions that maybe a doctor would come up with a problem patient on the ward and then they get the opinion of some other doctors, what do you think of this patient, what is your contact with this patient during your tour of duty and everybody seems, it so happens that everybody seems to know this patient.

I am not referring to any particular patient. When we talk of one patient, everybody has something to chip in about this patient and we form an opinion.

Q As Mr. Gully's ward doctor, did you request that these other doctors assist you in conducting this evaluation on October 20th?

A Well, we went there as a whole to look and determine the mental condition of this patient. So we went to ward 2.

Q Did you ask that these other doctors assist you in making the evaluation?

A Not officially.

Q What do you mean by that?

A I think that day we were talking about many things and we just decided that we want to evaluate this patient up in ward 2 to determine the mental condition.

Q Why did you make that decision? I mean this is a busy hospital. Doctors have many duties.

Why, in this particular instance, did you make the decision that four or five doctors should evaluate him?

A Because it seems that this patient has been in the hospital for quite some time and nobody---how would I say, nobody really---it was like we all go up and see the mental condition of this patient. Everybody knows this patient. They have a knowledge of this patient in their contact during their tour of duty and all other incidents.

Then they ask me also what was my opinion as the ward physician. I said, "To me, they are not psychotic. They can be certified back to prison," and I think to be sure, we all went there to see the patient and talk to them and made an opinion.

MR. GOETTEL: Mr. Gully testified that he was hearing voices. Did he ever tell you that he heard voices?

THE WITNESS: No.

MR. GOETTEL: He also testified that on several occasions he tried to kill himself and cut himself up rather badly. Were you familiar with those events?

THE WITNESS: No, but patients could just manipulate situations, would mention anything about hearing voices just to be retained here because they know this place you can serve your sentence better conditions than other facilities.

Q Was Mr. Gully, on October 20th, on the list of patients to be evaluated that day?

A I don't know.

Q You are not sure that there was a requirement from the administration anyway that he be evaluated on that day?

A No, I don't.

Q What you're saying is that there was no reason other than the interest of the psychiatrists on staff that an evaluation be conducted of him on the 20th?

A I did see the list for that day. I don't remember. I don't even know whether I went up to 21 to look into the list. But I didn't receive any paper, whether Mr. Gully was on the list for evaluation.

Q Was there any particular reason that the evaluation be conducted if he wasn't on the list of individuals to be evaluated that day?

A Well, it was the subject of discussion.

Q What caused the discussion to arise?

A I can't tell you because it's just that we were talking about it, your Honor, and then as we normally do in the morning. Every morning after the doctor on call reports his tour, we discuss about many things. We discuss about the vacations, leaves, patients, cut-ups, politics.

MR. GOETTEL: Was Dr. Sweeney present at that time?

THE WITNESS: No, he was not.

MR. GOETTEL: Because Dr. Sweeney's testimony, if I recall it accurately, was to the effect that he read your first evaluation of Matthew Gully and he agreed with your observations of the patient and vigorously disagreed with your conclusion that he should be retained in the hospital.

While I don't think he testified that he initiated the second evaluation, that was the impression that certainly came through, that he thought you had made a mistake in recommending that Gully be kept and that he therefore had the second evaluation made resulting in Gully being returned. At least that's how I remember his testimony.

MS. SILVERMAN: I don't remember it at all.

MS. BLOOM: I remember that and I can give you the page.

THE WITNESS: He wasn't present.

MR. GOETTEL: If he was the one that caused the subject to be raised, you are unaware of the fact that Dr. Sweeney, in effect, caused this second evaluation nine days later?

THE WITNESS: Are you saying he initiated something on October 20?

MR. GOETTEL: Either directly or indirectly. If that occurred, you are not aware of it?

THE WITNESS: No.

Q Is it common for psychiatrists to be talking about a patient and decide to go evaluate that patient?

A Yes, we all talk about patients just about every day. My patient, their patient, how do you know this patient, what kind of a patient is he, is he a drug user, what happened in the incident and all that.

Q Where did you conduct the evaluation of

Matthew Gully on October 20?

A In ward 2.

Q What is that ward?

A It's an infirmary and a psychiatric ward where they have patients who are supposedly suicidal or also if they are violent and aggressive and also if they are on a suicidal watch, then they have to be in the restraining sheet and also and infirmary ward.

Q Why was Matthew Gully on ward 2 at that time?

A Why he was in ward 2? I think he was in restraining sheet there.

Q Do you know why he had been placed in the restraining sheet?

A I think there was an incident in ward 6.

Q Do you know what happened?

A Not really. I don't know the whole story, what really happened on ward 6.

Q Do you know how long he had been placed in a restraining sheet?

A No, I don't know.

Q You conducted the interview while he was still in the restraining sheet?

A Yes, I think so.

Q Does the fact that someone is placed in a restraining sheet say anything about their mental condition? Is someone that is sicker than he might normally be placed in a restraining sheet or does the fact that someone is in a restraining sheet have nothing at all to do with mental conditions?

A I don't know if I got your question, but you can conduct an interview when a patient is in a restraining sheet.

MR. GOETTEL: What she's asking you, doctor, if you knew nothing about a patient and you just walked up to him for the first time and found that he was in restraints in a restraining sheet, would that not suggest to you that he had had some recent untoward incident and had some disturbance?

THE WITNESS: Yes. Are you saying like I knew that he was in restraining sheet?

Q My question is is the restraining sheet used when an individual becomes mentally sicker or when his emotional condition becomes worse?

A Well, if the patient is reported to have punched an inmate or punched an officer or got into a fight or cut himself, then he is placed in restraining sheet.

Q Would the fact that he is in the restraining sheet indicate that his psychosis is not in a state of remission?

A The restraining sheet, I think, is a mechanism just to protect him and other people. It's possible that he is not psychotic.

Q Was it your opinion when you came on ward 6 in August that Mr. Gully was psychotic?

A When I came to the ward?

Q Right.

A I haven't had any contacts with him before August.

Q When you came to the ward in August, was it your opinion that he was psychotic?

MS. SILVERMAN: The day he walked into the ward?

Q I mean during that period of time, during August when you first met him.

MR. GOETTEL: When you first became acquainted with Mr. Gully's mental condition, did he strike you as being psychotic at that time?

A No, in my opinion he was not psychotic.

Q In your opinion, was his mental condition, in October of 1975, similar to what it had been in August of 1975?

A He is not psychotic in October. He was not psychotic in August.

MR. GOETTEL: Let me ask you a question, doctor, about George Mitchell.

You say that he had previously suffered from schizophrenia of the paranoid type and at the time you recommended his release, he was in remission, is that correct?

THE WITNESS: Yes.

MR. GOETTEL: Had he theretofore been treated with chemotherapy?

THE WITNESS: Was he treated with---

MS. SILVERMAN: With drugs.

MR. GOETTEL: Drugs.

THE WITNESS: Psychotherapeutic medication before the certification?

MR. GOETTEL: Before the

decertification, before you found him capable of being sent back to prison.

THE WITNESS: I would look into the records, your Honor.

MR. GOETTEL: Would you please do that?

MS. SILVERMAN: I don't know if they're in there. There is also a thing called ward notes which include medications.

MR. GOETTEL: See what comments you may have on his medication.

THE WITNESS: It's possible we was on medication. I am not sure, your Honor.

MR. GOETTEL: Assuming that he was on medication, when he was returned to prison, I think you could foresee either he would not be on medication at all or he would be on much reduced dosage of medication because of the different medical attention available at the prisons, is that not so?

THE WITNESS: Yes.

MR. GOETTEL: How can you be sure then that this state of remission won't end as soon as your patient is taken off his chemotherapy?

THE WITNESS: We have no way of predicting whether he will have a relapse. What I usually do or what I sometimes do, we can try the patient off medication for a time and see how he functions and determine how he functions on the ward.

MR. GOETTEL: Shouldn't that be a standard procedure before anyone is decertified, if he's been on drugs, that he have a prolonged period or at least thirty days off the drugs to follow his progress during that period before decertifying him?

THE WITNESS: Well, if you say like a standard procedure here, I wouldn't know.

MR. GOETTEL: Would you consider it to be a desirable procedure?

THE WITNESS: Yes.

BY MS. BLOOM:

Q Turning to the same subject referring once again to Matthew Gully, on October 9th, it appears from your notations, Dr. Factora, that his medication level was sparine 100 milligrams three times a day, is that correct?

A (Witness nods head.)

Q Looking at the evaluation on October 20th, medication level was sparine 100 milligrams three times a day and sparine 200 milligrams H.S.

First of all what does H.S. mean?

A At nighttime or before sleeping.

Q Why was his medication level increased on October 19th and 20th, 1975?

A I don't know.

MS. SILVERMAN: Your Honor, I don't think those records show that there was any---

MR. GOETTEL: In any event, the witness said he doesn't know, so that ends the topic.

Q Would medication ever be increased for a patient if that patient's condition was in a state of remission or if that patient was better than he had been?

A That depends on what medication you give him.

Q Referring specifically to sparine.

A Sparine is anti-nervousness medication and also for sleeping. Patients who have problems sleeping, they request this kind of medication.

Q You don't know why the sparine 200 milligrams was given on that day?

A No, I don't.

Q Turning to Hector Cruz, you conducted an evaluation of Mr. Cruz on September 17, 1975, is that correct?

A Yes.

Q In that evaluation, you noted that he had gotten into one fight over a television program prior to being admitted to Ward 6 and he got into several fights with one of the patients.

Was this one of Mr. Cruz' problems, getting into fights, one manifestation of his mental illness?

A It's one of his behavior problems, yes, fights.

Q Would it be one indication whether he was either neurotic or psychotic?

A Not psychotic.

Q He wasn't psychotic?

A No.

Q You made the decision to retain him at that time?

A Yes.

Q On October 20, 1975, another evaluation was conducted. Was this evaluation conducted because his name had come up on a list from the administration to be evaluated?

A No, there was no list that came up.

Q Who initiated the evaluation on October 20th?

A The doctors, the medical staff. We went to ward 2. We interviewed the patient---no, not ward 2. Ward 3.

We interviewed the patient, and I know the patient. I concurred with their findings. I agreed with their decision, and we decided that he is ready to be returned to prison facilities.

Q So there was no request from the administration to conduct the evaluation that day?

A I am not aware of it.

Q Can you give me some idea of the number of times you conducted evaluations when the administration doesn't require you to do so?

It would seem that given a small number of doctors in this institution and the large number of patients that it is all that you can do to conduct the evaluations that are required by the administration.

How many times a month would you conduct an evaluation on your own initiative that is not required?

A That depends, I guess, on our time. We are short-handed, your Honor, and on a psychiatric staff, we barely have how many doctors, and we conduct interviews and evaluations on requests of the patients, on patients of other staff, family and add to the list. They come up from the administration building.

Sometimes when you see the patient, you talk to him and all these problems, you come in to interviewing him for quite some time which will constitute an evaluation.

Q But you don't remember why the evaluation on October 20th was initiated for Mr. Cruz?

A No.

Q I again direct your attention to one phrase in the evaluation on October 20th. You state that he has been functioning fairly well in the ward except that one time he was involved in an unpleasant incident.

That's about the middle of the page. Does unpleasant incident again refer to a possible disruption, a fight that he might have been involved in?

A This could be one of incidents he had in the past, television or whatever he might have mentioned to me.

Q What kind of action is taken when individuals continuously become involved in fights and disruptions in the institution?

A I can't say any specific policy, but patients, some patients are transferred to ward 3 if they are determined to be violent and be in frequent fights because in ward 3, I think they are placed there for the protection of other people.

In other words, if a patient is in frequent fights and all that, they recommend, maybe officers would recommend to the doctor or the ward physician will recommend to the superintendent or chief of the security that the patient is made as a census patient in ward 3 or as a visitor there for about two weeks until he is seen there every day with medication until he is determined not to be non-aggressive or non-violent any more.

Q What if the patient that is in ward 3

given an injection.

Q How long were you placed in the restraining sheet?

A I would say four to five hours because that afternoon I was taken out of the restraining sheet by a Lt. Battista and placed in a strait jacket and walked over to the transfer unit.

Q Did you walk over to the transfer unit while you were still in a strait jacket?

A Yes, I did.

Q Did you see a doctor between the time you were told you were transferred and the time that you walked over to the transfer unit?

A Dr. Feldman came up to the hospital while he was putting me in the restraining sheet and his statement was to the effect that---he asked why was I being sent back to prison, that he didn't think I was well enough to be sent back to prison.

But he said it was a joint decision, it wasn't his decision, so, you know, he would see whether or not he could get the decision rescinded.

But apparently he didn't because I was sent to the transfer unit anyway and the following day he came over to see me, you know, to see how I was and talk to me.

MS. SILVERMAN: Who did?

THE WITNESS: The following morning, he came over which was on a Saturday, the same doctor.

Q Dr. Feldman?

A Dr. Feldman.

MS. SILVERMAN: Your papers say Dr. Factora.

A Dr. Feldman came over to the transfer unit the next morning. He was inquiring about me to the correction officers and tried to talk to me and he again stated that according to his evaluation, my behavior and mental condition, he didn't think that I should be sent back to prison. I didn't see him again, you know, while I was in the transfer unit---

Q How long did you stay in the transfer unit?

A Between eleven and thirteen or fourteen days. I'm not sure.

Q How did you feel while you were there?

A Well, I started having the same problem that I was having at Attica originally, only this time it was intensified because I was having difficulty sleeping and my medication had to be increased.

I was getting the same medication on the transfer unit I was getting in Matteawan itself, but due to the problems I was having, it had to be increased, so in addition to the medication I was getting, I was given an injection at night and even with increased medication, I was having problems. So I wound up trying to commit suicide while I was on the transfer unit.

Q How many times did you attempt to commit suicide?

A Twice.

Q Were you placed in a cell in the transfer unit?

A Well, they're rooms actually. I guess you would term them cells, but they are rooms and they are similar to segregation as there's a bed and sink and a toilet.

Q Is the door locked in the evening?

A At night, yes, it is.

Q Where were you transferred when you left the transfer unit?

A Clinton.

Q Where were you placed in Clinton?

A Observation.

Q Would you describe what observation is?

A Well, observation is a small cell with open, you know, windows around it for observation purposes and you have just a bed and no other type of facilities in there and you spend---I spent fourteen days in observation.

Q Did you receive medication?

A Yes, I did.

Q Did you see doctors?

A I saw the institutional doctor where he prescribed medication for me and they had an institutional psychiatrist assistant, and I seen her on a daily basis.

She'd come in and ask me how I felt and finally, I saw two doctors from the outside, street doctors where I was evaluated by them. They determined that I should be sent back to Matteawan.

Q When did you return to Matteawan?

A I think it was around November '75, I guess.

Q How did you feel when you got back to Matteawan?

A Well, I felt---I was sick. I was kind of out of it, you know. I lost a lot of weight, and I couldn't eat, sleep, you know, when I got back, and I suppose, you know, it was determined---the term would be that---I would say I was sick.

I don't really know how to describe it.

Q Have you been to an evaluation at Matteawan since you have returned?

A No, I was seen by the doctor when I first came in which is procedure on the reception ward, but I haven't been seen by a doctor since.

Q Have you gone before the Board of Parole at Matteawan since you have been here?

A No, I haven't.

MS. BLOOM: That's all.

MR. GOETTEL: Cross examination?

CROSS EXAMINATION BY MS. SILVERMAN:

Q Mr. Mitchell, in October of 1974, you returned to Clinton State Prison, is that right?

A No, I'm not sure of the date, but it was in '74, yes.

Q That was at your request, was it not?

A That was my request.

MS. SILVERMAN: I have no further questions.

MR. GOETTEL: The witness is

excused.

(Whereupon the witness was excused and withdrew.)

MS. SILVERMAN: I call Dr. Factora.

oOo

VIC ARTHUR FACTORA,

after having been duly sworn, assumed his seat as a witness, was examined and testified as follows:

DIRECT EXAMINATION BY MS. SILVERMAN:

Q Dr. Factora, could you please state your current position at the Fishkill Correctional Facility?

A Clinical physician 1 at Fishkill Correctional-Matteawan State Complex.

Q Could you explain your educational background and training to the court? Start with college.

A I first acquired my present medical degree in University of Santa Thomas. I finished in March of 1960 and then I finished my Bachelor of Science in psychology in the same university in 1963.

I finished my Doctor of Medicine degree at Manila Central University in the Philippines in April of 1970 and after graduation, I did a short stint in the surgical department at Kilreeny Memorial Hospital in the Philippines, and I came to the United States in September of 1970.

I worked as a medical assistant at Masselan State Hospital in Masselan, Ohio, from November 1, 1970 until May 22, 1971 and then I worked at Essex County

Hospital Center from June 1, 1971 until April 15th of 1975.

Q What did you do there?

A I was a staff physician at that psychiatric hospital.

Q In any special area?

A Yes, psychiatry.

Q Where is that hospital?

A That's in Cedar Grove, New Jersey.

Q Then were did you go from there?

A I started as a clinical physician here April 24, 1975 until the present time.

Q Where are you licensed to practice medicine?

A I have a license to practice medicine in the Philippines.

Q Do you have a license in the State of New York?

A No.

Q Dr. Factora, do you perform evaluations as part of your routine here?

A Yes, I do.

Q During the course of these evaluations, do you make determinations to recommend or decertify an inmate and return him back to a correctional facility?

A Yes.

Q Have you been given any written guidelines as to the standards to be followed in making that determination?

A No.

Q Have you been given any oral guidelines?

A No.

Q What standard do you apply in making a determination whether to decertify someone?

A Well, I interview the patient. They are called for an interview up in ward 21 and we interview the patient and determine the condition.

Q What do you look for in making your determination whether to decertify him or not?

A Do a mental examination of the patient with the help of the records ward notes and all that and you ask questions, patients. You determine their contact with reality and their awareness of the environment, orientation and their speech, mood and all that.

Q I'm going to show you the progress notes and medical history of George Mitchell which is State's Exhibit E, doctor, and would like to direct your attention to 10/10/75, October 10, 1975.

I will ask you to just read that note to yourself.

(Handing document to witness.)

Q Did you recommend George Mitchell's decertification and return to State prison on October 10th?

A Yes.

Q Was it your medical opinion at that time that he was suitable for return to a State prison?

A Yes.

Q Why?

A Well, Mr. Mitchell was free of any sign or symptom of psychosis and he related to me very well. He seemed very oriented in all spheres and he was free of any behavior problems on the ward.

Q Was he on your ward prior to this time?

A Yes, at the time he was in my ward.

Q On your ward?

A Yes.

Q How long had he been on your ward prior to this evaluation, if you recall?

A I assume or I was assigned as a ward physician in August of 1975. I'm not sure whether he was on that ward before that.

Q When you came on the ward, was he on the ward already then?

A Yes.

Q When you saw him on October 10, 1975, he had been on your ward since you arrived in August of 1975?

A Yes.

Q You just indicated that in your opinion he was free of psychosis and seemed well oriented in all spheres?

A Yes.

Q Your diagnosis was, I believe, schizophrenia residual type. What does that mean, doctor?

A This is a condition wherein the patient is in remission, is free of signs and symptoms of psychotic episodes and this disease is also characterized by previous outbreaks of signs and symptoms of schizophrenia.

But at that time when I saw him, I felt he was free of any signs and symptoms of psychosis.

Q On November 14, 1975, doctor, would you read the note that is on the chart?

MS. SILVERMAN: At this time, I offer it into Evidence.

MS. BLOOM: I have no objection.

(Whereupon the above mentioned document was received in Evidence.)

Q What was your diagnosis on 11/14/75, doctor, of George Mitchell?

A Schizophrenia paranoid type with indulgenous depression.

Q In your opinion, on November 14, 1975, was he suitable for hospitalization at the Matteawan State Hospital?

A Yes.

Q In your opinion, doctor, the fact that he was suitable for hospitalization on November 14, 1975, did that mean that he was also suitable for hospitalization on October 10, 1975 when he was decertified?

A No.

Q Could you explain that?

A Well, at the time when I saw him in October, I felt that he had received the benefits from the hospitalization, and I felt he was ready to be certified to prison.

On November 14 of 1975, I believe that he needed psychiatric treatment.

Q You felt that his condition had changed, is that correct?

A Are you saying, from October and from---yes.

MS. SILVERMAN: I would like to mark this for Identification as Exhibit F.

(Whereupon the above mentioned document was marked as State's Exhibit F for Identification.)

Q Could you identify what that is for the court?

A Yes.

Q What is that, without going into the contents of it? Just tell us what it is.

A This paper here is a recommendation from the ward 6 social worker regarding George Mitchell.

Q Who is that directed to?

A It was recommended to me by the social worker.

Q Is that a memorandum that you normally receive from various members of the team?

A Yes.

Q In the course of your operations?

A Yes.

Q Is it in the normal course of the operations of the medical team and the staff here to prepare such memorandum from time to time?

A Yes, if they have recommendations, they can---

MS. SILVERMAN: I would like to offer that in Evidence.

MS. BLOOM: No objection.

MR. GOETTEL: It may be received.

(Whereupon the above mentioned document was marked in Evidence.)

Q Has any action been taken on this request of George Mitchell's?

A Not yet.

Q What course of action would normally be followed in this type of case where someone requests an evaluation for purposes of decertification?

A He will be evaluated by the staff or by the team on the ward composed of the charge officer, social worker, psychologist, the ward nurse and the ward physician.

Q Are you currently doing ward 21 evaluations, doctor?

A Not at the present time.

Q What method are you applying on your ward?

A Ward team meetings and evaluations.

Q What is that exactly?

A We schedule one patient at day to be evaluated by the team to determine their present behavior, present mental condition and to help them in whatever problems they have on the ward or problems with interpersonal relationships.

Q May this result in a decertification, this type of evaluation?

A Yes.

Q What does the team consist of?

A The charge officer, the ward nurse, social worker, psychologist and the ward physician.

Q What wards do you have, doctor?

A I have wards 8 and 6.

Q How many patients are on each of those wards?

A Ward 8, it's not the same every day because we transfer patients to some other ward. At the present time, about eighteen to twenty.

Q On each ward?

A On ward 6, twenty, twenty-one. I think twenty.

MS. SILVERMAN: May I offer

that as State's Exhibit G.

(Whereupon the clinical summary on Hector Cruz was marked as State's Exhibit G for Identification.)

Q Dr. Factora, on October 20, 1975, did you concur in the decertification of Mr. Cruz?

A Yes.

Q Was it your medical opinion at that time that he was decertifiable?

A Yes.

Q Why?

A Well, this patient Cruz has not exhibited any signs and symptoms of mental illness or psychosis, and I felt he was ready to be certified.

Q Was he on your ward prior to October 20, 1975?

A Yes.

Q How long had he been on your ward, if you recall?

A When I became the ward physician in ward 6 in August, he was there.

Q As the ward physician, did you have occasion to see him on the ward?

A On occasional rounds, I make, when I make rounds when the nurse would tell me what the problems of the day is and somebody wants to see me, then I would call them over and interview and see what the problem was.

Q Did you have occasion, if you recall today, to interview him from time to time on the ward?

A Yes.

Q The running progress notes show that you saw Cruz on September 17, 1975, but at that time, you did not decertify him back to prison.

A Yes.

Q In your opinion, however, is it a fact that by October 20, 1975, he was suitable for return?

A Yes.

Q Mr. Cruz has testified, doctor, that in his opinion, he got into a fight sometime in, I think early October at this institution and that this was the basis for his certification back to State prison.

Was that the reason you decertified him, doctor?

A No.

Q Turning your attention to Exhibit B marked in Evidence, would you direct your attention to the progress notes dated October 9 and October 20, 1975.

On October 20, 1975, did you concur in Mr. Gully's decertification?

A Yes.

Q In your medical opinion, was he suitable for return to State prison at that time?

A Yes, he was ready.

Q Why?

A Mr. Gully didn't exhibit any signs and symptoms of psychosis.

Q What was the diagnosis on him on October 20, 1975?

A Borderline mental retardation, personality disorder.

Q Is that a psychosis?

A No.

Q What was the second part of the diagnosis?

A Personality disorder.

Q Is that a psychosis?

A No, it is not.

Q What is that?

A It's a disorder in terms of his interpersonal relationships with people, his problem with being able to function with people.

Q Is that treatable?

A With therapy, yes.

Q Do you feel that diagnosis made him suitable for decertification or return to prison?

A Yes.

Q Had he been on your ward prior to October 20, 1975?

A Yes.

Q When did he arrive at your ward?

A When I became the ward physician, he was on ward 6 already.

Q Did you have occasion, from the time you became the ward physician to October 20, 1975, to speak with Mr. Gully?

A Yes.

Q During that time, did you form any opinion which led up to your diagnosis on October 20, 1975?

A Yes.

Q Again, doctor, what was his condition on October 20, 1975 which led to your decertification?

A He was free of psychotic signs and symptoms. He did not show any condition of confusion or bizarre behavior. He seemed fairly oriented. He spoke to and related to people very well.

MS. SILVERMAN: I have no

further questions.

CROSS EXAMINATION BY MS. BLOOM:

Q Dr. Factora, are you licensed to practice psychiatry in the State of New York?

A No.

Q Are you certified by the American Board of Psychiatry?

A No.

Q Are you qualified by the American Board of Psychiatry?

A No.

Q Are you permitted to testify at hearings which involve the retention of an inmate at Matteawan?

A One of my functions---are you saying a certification evaluation?

Q Certification to Matteawan.

A One of my functions there is to evaluate patients and to certify patients to facilities.

Q I mean certification to Matteawan, retention hearings.

MS. SILVERMAN: I believe the State provides that you have to be licensed in the State of New York, and I think the doctor has already testified that he isn't, so I think that it answers the question.

MR. GOETTEL: We have a stipulation that he is not so certified.

MS. SILVERMAN: At least I believe what the statute says.

MR. GOETTEL: I think that Dr. Sweeney's testimony made it clear that the statute required, for those purposes, doctors licensed to practice psychiatry in New York. There were only two or three doctors on the staff that qualified for those purposes.

Q Dr. Factora, you stated you were responsible for patients on ward 6. Is ward 6 a special ward? Are there particular patients that are sent to ward 6?

A In my stay here, I have never had any paper or anything that ward 6 is this kind of ward and all that. I don't know of any knowledge that ward 6 is this kind of ward, you know.

Q Is the physical layout of ward 6 different from the physical layout of the other wards at Matteawan?

A No, it's the same with the other wards.

also continues to become involved in fights and disruptions?

A I think he remains there until he is improved.

Q You indicated regarding Matthew Gully and intimated regarding Hector Cruz when you went on ward 6 in August of 1975, you felt that he was not psychotic.

Did you believe that he did not belong at Matteawan at that time?

A Yes, and I would say some other patients don't belong to Matteawan. This is in general.

Q Why did you recommend that he be retained at Matteawan?

A On September---

MS. SILVERMAN: Who are we talking about, Cruz?

MS. BLOOM: Gully.

MS. SILVERMAN: I'm going to object to this. He said that Gully told him that he didn't want to go back to prison and therefore even though he didn't think he was psychotic, he went along with him.

MR. GOETTEL: No, I think we have had enough about Gully.

A He feared for his life at the time, as I mentioned in my quotes in here. He didn't want to go back. He said he has enemies and all that. I retained him.

Q If he had said the same thing in October of 1975, would your decision have been the same?

MS. SILVERMAN: Objection.

MR. GOETTEL: I will allow it.

A Come again please.

Q If he had said the same thing to you in October of 1975 that he feared for his life, he was afraid to go back to prison and he didn't want to go back for that reason, would your decision to have been to retain him or to certify him back to prison?

A With the medical staff decision, I would predict that we will have to certify him because most of us are aware or all of us are aware that we have many patients in Matteawan that don't belong there. We have many non-psychotic patients and many who are ready to be certified and we still have them.

Q Turning to George Mitchell, you indicated that on October of 1975, you recommended that he be certified to prison.

A October 10th.

MR. GOETTEL: As I pointed out earlier, for shorthand purposes, I don't mind you calling it decertified, but you don't call it certified because that's the process that puts them in, not gets them out.

MS. SILVERMAN: In a sense, it is a decertification because it returns a man to his sane position.

MR. GOETTEL: It has the practical effect of ending the certification, but certification, as you know, under the New York State Mental Hygiene Law, is a rather involved complex legal proceeding and what's occurring in the hospital in terms of ending it doesn't fall within that framework.

MS. SILVERMAN: That's because when you call a man insane, your Honor, it requires somewhat more formality than to call him sane. It seems to be a greater detriment.

MR. GOETTEL: To call a patient cured when, in fact, he may not be so may be quite a detriment too, but that's one of the things that this is all about.

What was your question?

Q On October 10th, you recommended that Mr. Mitchell be transferred back to prison, is that correct?

A Yes.

Q At the conclusion of your interview with Mr. Mitchell, did you inform him that this was the conclusion that you had reached?

A I don't recall if I mentioned to him. It was October. I don't remember if I mentioned to him about---

MR. GOETTEL: Do you usually tell patients when you have made a decision to return them to prison?

THE WITNESS: Some, your Honor.

MR. GOETTEL: Do you usually tell those patients who don't want to go back that they are being sent back?

THE WITNESS: I would say yes, we inform them, too.

MR. GOETTEL: Usually?

THE WITNESS: Yes.

Q Mr. Mitchell testified that when he learned that he was going to be sent back to prison, he became very upset and attempted to commit suicide on two occasions while he was in the transfer unit.

Did you have any contact with Mr. Mitchell after he went to the transfer unit?

A No.

Q Do you have any knowledge of his attempts to commit suicide while he was there?

A You know, I would say this, your Honor. Every day we have the O.D. reports of his tour.

MS. SILVERMAN: O.D.?

A Doctor on call. Every morning, I should say, the O.D. reports about his tour of duty at night. Weekends or weekdays and maybe he must have mentioned to the staff about this. I am not sure whether I was present or maybe I was off or on vacation.

Q Do you feel that if Mr. Mitchell did attempt to commit suicide when he was in the transfer unit that this would be an indication that he was being manipulative and attempting to stay here?

MS. SILVERMAN: I'm going to object to the question because attempting to commit suicide, to me, that's very vague---maybe the doctor can answer it, but it seems to me if he cut himself or if he did something---

MR. GOETTEL: The question assumes that it was a genuine attempt to end his life, and I think obviously the answer to the question turns upon, whether in fact, it was genuine.

If he was feigning a suicide attempt, then it was manipulative and if he seriously meant it, then it wasn't manipulative.

I don't know of any way that the doctor who was not present can express an opinion upon whether or not the effort was genuine.

Am I correct in that regard, doctor?

THE WITNESS: Yes, your Honor.

Q Do you have any knowledge of Mr. Mitchell's reaction to being told that he was going to be sent back to prison?

A No.

Q Were there any reports made to you by officers, the officer who informed him?

A No.

Q So you were not informed that Mr. Mitchell became very upset and, in his words, blacked out or became unaware of what was happening, got into a disruption?

A No, I wasn't aware of those things.

Q You indicated that when Mr. Mitchell returned to Matteawan, he had another outbreak of his mental disease or schizophrenia, is that correct?

A Based on my mental examination, I gave him a diagnosis of schizophrenia paranoid type, yes.

Q What facts led you to that conclusion?

A Based on what he told me in the interview, "I feel agents are following me around," and this is a form of strong suspicion that he is persecuted or being put under surveillance or followed through.

This is one of the major symptoms of the disease, schizophrenia paranoid and at the time, I can describe him as he was depressed, he was looking at the floor all the time, no emotional activity, somewhat guarded and withdrawn.

Q Would you describe him as being in a psychotic state?

A At the time?

Q Yes.

A Yes.

Q Is there any way that you could determine that he wasn't faking it, that he wasn't manipulating you into permitting him to stay at Matteawan?

A Well, with further interviews and observation, you would be able to. But some admissions, regularly, your Honor, when these admissions come to ward 8, most of them stay there for two or three days because the influx is very rapid and they are transferred after two or three days right away.

In other words, there was much, much observation was done on ward 8 because I attend to the other admission patients, write them up and all that.

I didn't have time to follow them through, no feedback from other staff.

Q Have you spoken with Mr. Mitchell since that time, since November of 1975? Have you evaluated him?

A No.

MS. BLOOM: I have no further questions.

EXAMINATION BY MR. GOETTEL:

Q You indicated that fighting was a behavior problem. Can aggressive hostile behavior ever be a symptom of a mental disease?

A Yes.

Q Can it be a symptom of a psychotic mental disease?

A One of the symptoms, yes, your Honor.

Q What other symptoms would be present besides hostile behavior?

A Let me just explain on that as a psychotic symptom. When patients have this auditory hallucination, when they hear these voices telling them to kill somebody or to hurt somebody and they get into a fight. So I would say it's a symptom.

Q But it has to be coupled with delusionary symptoms as well?

A Yes, but you would really have to examine the patient very well, do a complete mental examination and know him, what his history is.

Q Would not a person with paranoia very often be aggressively hostile against persons whom he thought were plotting against him?

A Yes.

Q I take it from your testimony that it's your understanding that the hospital policy is to take in and retain only persons who are psychotic?

A Yes, your Honor.

Q And that neurotic patients, even if extremely neurotic, are not normally taken in and they're normally retained, is that correct?

A Are not normally retained.

Q Do you have some patients who are diagnosed as being merely neurotic but are nevertheless retained?

A Yes, your Honor.

Q Why is that?

A They request, they strongly request for the fear of their life and some request to be here because of family problems, like it's easier to visit them here than being in Clinton or in Auburn which is far from the city. You have to take into consideration this, these matters, your Honor.

Q You do then consider the patient's own wishes about whether or not he goes back?

A Yes, your Honor, just to maintain a good relationship with the patient, therapeutic relationship with the patient.

Q Do you also take into account the treatmental aspects of it, which is to say even if the patient is psychotic, even if he is not responding to treatment, would you consider returning him to prison?

A No, your Honor.

Q You would keep a psychotic patient even though he was not benefiting by his hospitalization?

A Well, I would say this, your Honor. I would look into the problem very carefully. I would look into the problem very carefully and determine---what you mean, like he is not responding to the therapy?

Q No improvement. You do have patients occasionally who do not improve at all, do you not?

A Yes, but some of them are usually family created. Some of them, the patient is just not motivated, so he needs to be in therapy, to be motivated to do something for himself, to be in some kind of a job or an activity to occupy himself during the day.

Q I take it that a lot of these decisions as to whether a patient is ready to be sent back to prison are marginal determinations, judgemental type decisions which you have to make and that it's not a clear cut thing one way or the other in many cases, is that so?

A Well, a psychiatrist or a physician has the decision to certify this patient based on his judgement as he sees the patient physically, the psychiatric findings, the present mental signs and symptoms, his behavior and as he relates to you, you know.

In other words, the physician will be able to decide how the patient came to him, his present condition, whether he is still psychotic or not, whether he is non-agressive at the time or non-violent.

Q The point I was leading up to though is that some of these decisions you have to make are difficult, borderline decisions which could go one or way could the other with little change in your decision, is that not so?

A I don't get that.

Q Well, you have two alternatives, to retain the patient or to send him back to prison. In some instances, the decision is very clear and you have no problems with it. But I would think in other cases, you debate a bit about it and the decision is difficult to make.

A Yes.

Q When you have these debatable cases, do you take into account whether or not the patient has been assaulting other patients and causing difficulties on the ward?

A (Witness nods head.)

Q Is that a factor you would consider?

A Yes, your Honor.

Q Which way would that factor work? Would that be a factor toward retention or a factor toward sending him to prison?

A A patient who is involved in assaultive behavior and at the same time if you see him, if in your judgemental encounter this kind of problem in prison because he is the attacker, as we call it, and his life would be in danger, I think you would consider to retain him, your Honor.

Q We have had several prisoners testify and these are patients who have been decertified back to prison and following incidents of assaultive behavior here at the hospital and after their return to prison, they were promptly involved in further assaults on other inmates resulting in their being certified back here to Matteawan.

I take it that from your standpoint, if you could foresee the probability of assault by the patient upon return to prison, you would be inclined to retain him here in the hospital in the first place?

A Based on your examination of the patient and as you see him, you may have an inclination to retain him. But may I just say something, your Honor, about these patients coming back to Matteawan.

I feel that a very good criteria should be set up before they are sent here, if just based on behavior problems without mental symptoms. I think it's not a good criterion for that.

Q Well, the criterion is set up that he's got to be certified as, in effect, insane before he can be sent here. That has to be on the testimony of two independent psychiatrists and a hearing before a judge under the Mental Hygiene Law. But this is not to say that the decisions made are necessarily correct.

A Thinking that maybe the two physicians have just had the first contact with the patient, in other words he doesn't have---they don't know the patient that well, maybe just a little.

MR. GOETTEL: There's been a lot of criticism the way that system works. It's the one thing we don't have to worry ourselves with here. We are working from the other side of the coin.

Any re-direct examination?

RE-DIRECT EXAMINATION BY MS. SILVERMAN:

Q Is sparine a psychotropic drug?

A It falls under the psychotropic medication.

Q What is the primary use?

A Specifically it's an anti-nervousness, anti-anxiety, anti-tension medication.

Q Would it be used for treatment, normally of schizophrenia?

A Yes.

Q Would it cure schizophrenia or could it put it into remission?

A It would help.

Q Would it be the primary drug that would be used for that purpose?

A No.

Q What would its purpose be then if it was given to someone who was a psychotic?

A It would allay the nervousness of the individual or inmate.

Q Would it be ancillary to some other course of treatment then or some other drug?

A How do you say, ancillary---

Q It would not be sufficient to cure or to treat---

A Schizophrenia.

Q Would normally not be used to treat schizophrenia, so that if it were given, would it be given in conjunction with another drug to treat the schizophrenia?

A Yes, conjunction with another drug.

Q If you know, doctor, are individuals discharged from civil mental hospitals with a prescription for sparine? Is that a possibility?

A Discharged from here?

Q Discharged from any mental hospital.

A Yes.

Q Would such an individual or could such an individual on occasion be given sparine?

A Yes.

Q Not withstanding the fact that they are no longer hospitalized?

A Yes.

Q Would that be unusual?

A No.

Q Doctor, are all psychoses treatable assuming they are not in remission?

A Yes.

Q They are treatable?

A Yes, they're treatable.

Q Is an anti-social personality a treatable disorder?

A Yes.

Q Is it always a treatable disorder?

A Yes.

Q An anti-social personality?

A With good therapy.

Q Is it treatable here, doctor?

A Yes.

Q What is the treatment?

A We have group and individual therapy. Some patients would prefer relating verbally to the therapist on an individual basis or a group basis.

Q Is the personality disorder an anti-social personality disorder?

A Yes.

Q Gully was discharged with a diagnosis of a personality disorder.

A Yes.

Q Was that treatable?

A Yes.

Q Well then, why was he discharged?

A He has improved.

Q What do you mean by that?

A The patient has fairly functioned in a hospital set up. He has attended activities. He has, as I know him, been relating to some patients on the ward.

He is the president of the ward as far as I can remember.

Q He is what?

A The president of the ward. I think they have an organization and he was the president.

Q So a personality disorder or an anti-social personality can reach a point where there is no point in retaining the person for hospitalization?

A Right.

Q Is that right?

A Yes.

Q Was that the case with Mr. Gully?

A Yes.

MR. GOETTEL: I should tell you, doctor, that at least one other doctor on the staff has expressed the opinion that an anti-social personality cannot be effectively treated.

THE WITNESS: In my opinion, it can be treated with good therapy.

Q Is there good therapy here available generally for treating that type of---or is this institution geared for treating that type of disorder?

A We have a program here, your Honor---I don't know if---it's not the best, but we can treat patients here. We have individual therapy. We have O.T., library, school. I think it's adequate for the patients that come in here.

MS. SILVERMAN: I have no further questions.

(Whereupon the witness was excused and withdrew.)

MR. GOETTEL: Call your next witness.

MS. SILVERMAN: Atilla Cakir.

oOo

ATILLA CAKIR,

after having been duly sworn, assumed his seat as a witness was examined and testified as follows:

DIRECT EXAMINATION BY MS. SILVERMAN:

Q Dr. Cakir, what is your position at the Fishkill Correctional Facility?

A Well, I am psychiatrist at Matteawan State Hospital.

Q Do you have a title or classification?

A Psychiatrist 2.

Q How long have you been employed at the institution?

A More than nine years.

Q Could you give the court your professional training and background, doctor.

A Well, I had my medical school completed in Turkey and then I came to this country in 1956. I had my internship in Wichita, Kansas and then I had my psychiatric training together with Colorado State Hospital in Colorado, Gowanda State Hospital in Helmud, New York and Middletown State Hospital, New York.

Q Could you give us the dates perhaps?

A Can I show the---

Q Use whatever you need to refresh your recollection.

A This is my medical diploma.

Q Just give us the dates. If you need anything to read from---

A 1956.

Q For what?

A My diploma, medical doctor.

Q Where was that from?

A Ankura, Turkey.

Q Then after that?

A After that, my internship at Wichita, Kansas, one year, 1956.

Q What was that in?

A Rotating internship, all covering general medicine, everything. 1956 to 1957.

Q What was that in?

A Internship, whole year.

Q This was at St. Francis Hospital?

A Yes.

Q What was that in?

A Wichita, Kansas.

Q That's the same one that you had just told us about?

A Yes. Then Colorado State Hospital psychiatric training one year. Then New York State, psychiatric training three years.

Q Where was that?

A I was in Gowanda, New York, Gowanda State Hospital and Middletown State Hospital. Altogether is five years I was in New York State and this course is everything, training completed by New York State psychiatric.

Q Then what happened after 1962 when you finished?

A '63 I went back to Turkey to complete my military duties. Then 1965, I believe, I took my Turkish neurology and psychiatric board. Then '67 I came back to Matteawan to United States and since then I am employed here.

Q Are you licensed to practice medicine anywhere, doctor?

A Well, I passed the written examination and board examination Kentucky, same examination, but I didn't receive the full license because I am not citizen and few things I am missing.

Q Are you licensed to practice medicine anywhere outside the United States?

A Outside?

Q Yes.

A Yes, Turkey.

Q Are you licensed to practice psychiatry in particular?

A I have my board in Turkey.

Q You do?

A Yes, I show the diploma.

Q Turning your attention now, doctor, to some of the inmates at Matteawan, I show you State's Exhibit G in Evidence, doctor, and I would like to direct your attention to October 20, 1975, and ask you if you could read the progress note that was written on Mr. Cruz.

A Yes.

Q Now, Dr. Cakir, did you, on October 20, 1975, concur in a decision to decertify Cruz from the Matteawan State Hospital and return him to State prison?

Did you concur in the decision to decertify him and return him to State prison on October 20, 1975?

A No. You mean is this certification---I couldn't understand you.

Q Did you determine, in conjunction with the other doctors listed here, to return Cruz to State prison?

A Yes.

Q Was he, in your opinion, medical opinion, on October 20, 1975, suitable for return to State prison?

A Yes.

Q Why, doctor?

A Well, it's my sincere opinion---I know Mr. Cruz quite well because I have been his doctor years ago, too, that he was not mentally ill to be at the Matteawan State Hospital.

Many occasions, maybe in few occasions, he was degree of psychosis because of his---I don't know if his manipulation or not, but I believe that he was not psychotic and he didn't need psychiatric help at this hospital. That time and even before.

Q How did you happen to know Mr. Cruz? On what occasions did you speak with him?

A Well, Mr. Cruz quite often came to my ward where I am in charge of the special housing unit. Several times I met him there and I met him when I was doctor on the open wards. He was my patient. I don't know the years, but I know that he was my patient.

Q What standard, doctor, do you apply in determining whether or not an individual is suitable for return to prison?

A Well, this is a very delicate and very deep subject. It depends personal judgement of every doctor. It my judgement, it depends on the patient being psychotic or not.

I mean, that if his mental capacity, it really shows impairment where to the degree that he cannot function to not only the prison or outside world, to the reality, he cannot show the capacity, demands of the life and be able to adjust himself and he shows this impairment and any patient can show in anything and mood or behavior. This is my own judgement.

If I see that this impairment of his thinking or his moods, emotions and behavior, I use my own judgement, experience, knowledge and make this decision.

Q I'm going to direct your attention, doctor, to State's Exhibit B in Evidence. It's progress notes on Matthew Gully. Would you read the periodic evaluation dated October 20, 1975?

A Yes.

Q Did you concur in the decision?

A Yes.

Q Was it your medical opinion at this time that Mr. Gully was suitable for return to a correctional facility?

A Definitely, yes.

Q Why?

A Because just I explain now that is according to my judgement, according to my knowledge, he was not psychotic, he was not really even mentally ill to require further hospitalization at Matteawan State Hospital.

Q Prior to October 20, 1975, had you had any contacts, prior contacts---

A Well, Mr. Gully was my patient, I remember, when I was ward doctor of ward 11 a few years back, and I knew him quite good. Then I also several times, short time, I was his doctor, treating doctor at the special housing unit, ward 3. A few times he came there.

Q How much time prior to October 20, 1975,---

A I cannot say. That is---this is impossible for me because I really see that such patients mentally disturbed patient on ward 3 is three or four of them, they come to ward 3. I treat them, they go back.

Q Prior to October 20, 1975, you had had various contacts with Mr. Gully?

A Yes.

Q Mr. Gully and Mr. Cruz, doctor, have both testified that they were involved in some incident, I believe, on October 17, 1975 and it was their testimony that this caused or resulted in their return to State prison.

Did you consent to their return to State prison because they had been involved in some incident?

A Not really. It's only this maybe delayed it a little bit on revelation of these patients.

Q In what sense?

A In that if they were not going to be getting attention like that, maybe we were not going to evaluate them three days later, maybe one month later. But this happened.

But for example, there's Mr. Cruz concerned, he was getting very hyperactivity, assaulting to other people, and I believe just before this incident, he was doctor there at night. He fractured one of the patient's tronget, the nose.

Q Now, doctor, if either of these patients, Mr. Cruz or Mr. Gully, had, in your medical opinion, been psychotic on October 20, 1975, would you have consented to their transfer back to State prison?

A Definitely not. Can I add one comment?

Q Yes.

A It's definitely not because I am aware and I am psychiatrist about sixteen, eighteen years now, and it's my goal really to help these sick patients and maybe outside walls they don't understand their problems. I think I understand, I think I feel for their diseases and whenever they get suffer like that, this is my duty not to punish them. Really treat them, help them and not to get rid of them.

Q Are psychoses generally treatable?

A Well, there are several consents about it. Just now is according my own opinion, you cannot cure them. You can help them.

Q Is an anti-social personality a psychosis?

A Not itself, no. They could be with the psychosis together.

Q Is it treatable, doctor, an anti-social personality?

A Well, when some character disorders, unusual behavior, are to our opinion---there are some psychiatrists they might believe different way, but I don't believe that you can really treat them.

Q How would you characterize an anti-social personality? Is that a character disorder as opposed to a psychosis?

A Is it---

Q Is an anti-social personality, would that fall in the category of a character disorder rather than a psychosis?

A Sure it is. Not rather than, it's completely---to my opinion, they are nothing to do with the psychosis.

MR. GOETTEL: Doctor, when you were speaking with Mr. Cruz, in what language did you converse with him?

THE WITNESS: English.

MR. GOETTEL: We had a good deal of difficulty understanding Mr. Cruz' English. Did you have any difficulty with his English?

THE WITNESS: Well, it's being foreigner myself, probably you are having same trouble with me, too. But I am more used to dealing with such a trouble than regular person because I have been in these hospitals and dealing with Spanish background or Chinese background people.

Usually little bit is when we have some times real problem because they cannot comprehend the English. Then we have to use the interpreter. But Mr. Cruz, I don't need it.

Q Are you familiar with Mr. Dunleavy, doctor?

A Very much, yes.

Q Is he currently on your ward?

A Yes.

Q Do you have a current opinion as to Mr. Dunleavy's mental competence at the current time?

A Well, he is competent, yes.

Q How would you describe his condition?

A His condition is very likable person.

Q Is he psychotic?

A I don't believe you are coming to that part. I don't believe---you are coming to that part. This is very critical question, but I don't believe honestly he is psychotic, no.

Q On October 3, 1975---

A Is my recollection, I remember it.

Q On October 3, 1975, you had occasion to evaluate Mr. Dunleavy. At the end of that, doctor, the Exhibit reads, "At the present time, I suggest his prelongation of hospitalization and if we consider his discharge, I suggest that this be done by a panel of psychiatrists."

Why did you put that down there?

A Well, I swear to tell the truth and it's because I didn't have enough guts by myself because when you involve with such a case, you have to involve with the politics, judges, lawyers and Mr. Dunleavy is very, very---I could consider him one of the genius persons.

Q Does he wish to leave the institution?

A No, he doesn't, and I know that if I do such a thing by myself, I will be suffering more.

Q Do you know Luis Poveromo?

A Yes.

Q How do you know him, doctor?

A Well, they are very pleasant patient of mine, and I---

Q I don't mean how does he seem. Is he on your ward?

A Yes, they are my patients at the present time.

Q Do you have a current opinion as to his mental condition?

A Well, at this point, I believe that he is not psychotic either, but Mr. Luis Poveromo has less frustration tolerance than others we are discussing and he has very short fuse. He can become really very disturbed level, maybe you can consider him at that time psychotic.

Q Do you know or has he expressed to you one way or the other whether he wishes to stay at Matteawan or leave Matteawan?

A Well, they are my patients. I know them. I see them every day. Any of them would like it, he reaches the level that they like to go out, they are free to come and talk with me every day and they are not.

Q They do not want to go out?

A They don't want to go out.

MS. SILVERMAN: I have no further questions.

CROSS EXAMINATION BY MS. BLOOM:

Q Dr. Cakir, on October 20, 1975, you indicated that you examined Hector Cruz?

A Yes.

Q Had you been Hector Cruz' doctor, ward doctor at that time?

A No.

Q Why did you participate in the evaluation?

A Two reasons. One of them is, as you realize, that day he was on ward 3. I am ward doctor of ward 3. Any patient goes there automatically became my patient. One of the reasons I was involved, because of ward 3.

Second, I believe during that time we didn't have our chief psychiatrist around and there such a question arose that if they are psychotic or not, we have to make some evaluation about them. The doctor ask consultation and any doctor anyplace has the right to ask the other doctors' opinion. This is one of the cases.

Q What doctor asked for your opinion that day?

A Dr. Factora, I believe, was his doctor.

Q Was Mr. Cruz scheduled for a regular evaluation that day by the administration?

A Well, we usually have two types of patterns we follow. Sometimes we follow the regular pattern that they schedule from the administration. Sometimes we don't have to. If, for example---can I give you an example?

If one patient comes to me today, if he wants to be evaluated, I can evaluate him there or some other reason, if he liked to be evaluated, the patient, you can do that. There is no restriction.

Q What caused someone to schedule Hector Cruz for an evaluation that day?

A Hector Cruz was, I believe,---I have nothing to do, but I wanted to evaluate him as I mentioned before. Mr. Cruz was becoming really behavior problem. He fractured some other patient's nose which, if you follow his case, he didn't get anything.

Now, I was the doctor. I didn't even put him to special housing unit. He was put into another ward with the other patients. Nobody has a right to do so because other patient has right to be treated here, too, and I didn't initiate it, by I felt very strongly that we should do something about it. If he is not sick, he should be sent out. If he is sick, this is different.

Q Then what you're telling us is that an overly aggressive behavior by a patient would be cause for scheduling an evaluation?

A Well, I would say this happens like I stated before. If he was good behavior patient without any psychotic---maybe we were not going to---because we are a dealing with a thousand people here. We were not going to be right away to find him that he was not psychotic and he should be out. This came to our attention, should this be behavior.

MR. GOETTEL: You spoke earlier about the fact that these are judgemental decisions which you have to make on your own. I would gather some of the decisions are fairly close and could go one way or they could go the other.

THE WITNESS: Yes.

MR. GOETTEL: When you have those close cases, I get the impression that if the patient involved has been trouble on the ward and has been hurting other patients, you are more likely to release him than not, to send him back to prison than not, is that correct?

THE WITNESS: That doesn't affect our decision, your Honor. But this affects your bringing it to your attention.

Q You said Hector Cruz was in ward 3 when you evaluated him?

A Yes.

Q Is ward 3 reserved for certain kinds of patients?

A Yes.

Q What kinds of patients?

A Ward 3 is we have two kinds of patients on ward 3. One of them we call census patients which they operate like other ward patients. Like Mr. Dunleavy is a census patient and they can participate in every program. They can have all what the institution permits them, like they can have the other patients.

We have visitors on ward 3 and to be on ward 3 as a visitor patient has to have medical reason, become disturbed, real problem, behavior problem, emotional problem.

Q Why was Hector Cruz on ward 3 on that day, do you know?

A Well, I believe that he was disturbed, fighting with this incident happened and he was put ward 3 to await to disturbances.

Q Was Matthew Gully also on ward 3 on that day?

A No, I didn't see Gully on ward 3 that day.

Q Where did you interview Matthew Gully?

A Two.

Q Was he in restraining sheets when you conducted the interview?

A Yes.

Q When is the restraining sheet normally used for patients?

A This is again a judgement of the doctors. When you think back is patient quite disturbed, mentally, physically, emotionally, whatever you call it, and you judge either restraining sheet or 3, seclusion. One of the reasons you have to be very careful not to place the patient to ward 3, if he is suicidal, if he is going to hurt himself. If you are not going to control him on ward 3.

Then the judgement is that it's playing roles there, you put the patient to the restraining sheet until he calms down and all medication reaches him.

Q Is the fact that a restraining sheet, that a patient is placed in a restraining sheet, an indication that the patient has become more mentally ill or is it simply---

A Not necessarily. As I said to you, you can keep it very, very withdrawn quiet patient sometimes in restraining sheet just to protect him from himself.

Q Do you know why Matthew Gully was placed in a restraining sheet on that day?

A Well, I cannot really say because I wasn't the person who put him in the restraining sheet. You have to question his doctor.

Q Before you made the recommendation to return Matthew Gully to prison, did you review the use of force forms that were completed before he was placed in a restraining sheet?

A No.

Q Did you review recent reports that had been submitted by correction officers regarding his behavior in the ward?

A Well, I would say I didn't see all the papers, but I knew that this is what happened during this incident.

Q You did?

A Yes, I was aware of what was going on.

Q How were you aware?

A Because we have several ways to be aware. Sometime you see the reports. Sometime you listen involved people which we listen to involved people. This is the day before.

Q Did the fact that Matthew Gully had been involved in disruptive behavior affect your decision to transfer him back to prison?

A Not really affect my decision. As I said, it's when you evaluate somebody for some reason, now we are not discussing that why the reason you are evaluating, but when you evaluate someone you forget about what happened. You evaluate your patient's condition.

You evaluate honestly if he is psychotic, if he needs help, he needs more follow up or is whatever you believe in it. This doesn't affect whatever he did or you know. It is only, I said, sometimes such a behavior help you to bring your attention and make the evaluation. But if the patient is sick, that's important. This is the main thing.

Q Did you utilize the use of force forms that had been submitted for Matthew Gully in making your evaluation?

A Did I sign it myself?

Q Did you review those before you made the evaluation?

A No, not me. Usually I do it, but not that day because just now I am their doctor who is working both places, ward 3 and ward 2, who are in seclusion or restraining sheet. This is my judgement.

I have to see them every day and use my

judgement, but then I wasn't on ward 2 doctor.

Q Moving to George Dunleavy, you indicated that Mr. Dunleavy was not psychotic, but that he was a political question. Could you expand upon that?

A Well, this is a very big question. When we go the subject, is many of our patients, they are going to the prison, all right. We have seventeen thousand prisoners, and I believe this is very strong statement. That's why it becomes political, where I don't believe that we have a follow-up at the prison system, like clinic, outside hospitals.

When you send the patient to the clinic to the society, clinics follow them. But we don't have a good follow-up system at the prisons and what happens is many patients go there and we believe that they are not really mentally ill, they are not psychotic, they don't need hospitalization. But they are able to come back.

This is the big question you have to find out why. Quite often this works like that and for Gully, for Cruz or Mr. Dunleavy, this works the same way. They come back and you are always sending patients to the prison, they are coming back, sending, coming back. This is coming to play, but I am aware this is not only in this hospital.

This is same thing Mid-Hudson. I worked there. I used to work there as a consultant. They go to the court, then patient able to come back because the doctors over there, they believe that they need psychiatric help. This is going on between as many places like that. Mr. Dunleavy, if I sent him out, I am sure that within one month, he will be back. I have experience.

MR. GOETTEL: Doesn't that indicate, doctor, that either the doctors at Matteawan are wrong in releasing him or that independent psychiatrists who recommend his certification are wrong in believing he needs it?

THE WITNESS: Well, my Honor, I will be very honest with you. This is one question they are raising nowadays very often. But my sincere belief, I work in mental institutions everywhere, several places.

If we are under the Mental Hygiene now, we will be more strict sending this patient out because we make a survey here with the doctors frmm mental institution. I can give them name, too, and many of our patients, including, I believe, Dunleavy, too, more than we would, they recommend to send them back to the correction.

MS. SILVERMAN: You mean less strict?

THE WITNESS: They are more strict, not to accept such a patient here than flexibility we are showing here. This happened recently, I believe, last six months, at least four or five mental hygiene doctors qualified psychiatrists and some of them has a board. We work together all these cases and they have same idea.

We never had any trouble and only trouble we had that some patients we still felt that they needed some help in this institution. They were more strict to keep the patient here.

MR. GOETTEL: You are suggesting then that if mental hygiene doctors were employed for purposes of decertification, there would be fewer patients sent back to prison?

THE WITNESS: No, more patients would be---

MR. GOETTEL: More patients would go back?

THE WITNESS: Yes, this happened, my Honor, last six months. We went every case together with these doctors. This is not only my opinion, this is fact.

MR. GOETTEL: Why is it when they are on the other side and they are certifying people in here---

MS. SILVERMAN: They are independent psychiatrists. They are not members of the department. At the prison, they are.

THE WITNESS: My Honor, one thing really, if you do let me give my opinion, if you work at the prison, you are thinking differently than if you are working at the hospital or same thing if you are working at the court, your thinking affected for many other things than you are working in the hospital.

For example, I go to the prison as a consultant. All that I see is the patient at the institution. They put in the cell. They call the box. It is without any help. I rather send this patient here if really if psychotic or not, but as a human being, I like to help such an individual. Too many things going on like that.

MR. GOETTEL: There's no doubt that one's judgement is affected by one's immediate environment and experience that you are supposed to be attending to, but what is the solution for the fact that we have patients whom the doctors here at the hospital say are ready to go back to prison but then when they go back to prison, the warden or superintendent calls in two outside psychiatrists or maybe even mental health pyschiatrists who say, "No, this man belongs back in the hospital."

Back and forth they go.

THE WITNESS: Can I say my

sincere opinion?

MR. GOETTEL: Yes, please.

THE WITNESS: This is not our trouble. Real sick mentally disturbed patients. We are not discussing that part now. What we are discussing here, talking about is the manipulaters. They are making themselves at the prison system too nuisance that they are very glad to get rid of them. This is my sincere opinion, and I will repeat it everywhere if they hang me.

This is psychopath or anti-social person we are talking about. They are able to pull every trick in their books, use every way, meaning full way, fighting, cheating, lying, everything, and show them even they are trying to suicidal gestures, cutting, lacerating, self inflicted laceration, cutting, and if I am prison doctor, I cannot keep them there myself either. It's too much pressure, too much responsibility.

BY MS. BLOOM:

Q Dr. Cakir, are you familiar with George Dunleavy's medical history, mental history?

A Yes, I am quite familiar. I don't know his background completely because I have to review again.

Q Do you know just from memory whether or not he's been in other mental institutions besides Matteawan?

A I really don't know. I really---I don't think so this any big help. He could be many mental institutions, yes. He could be.

Q You're not sure?

A I am not sure of this. It doesn't make any difference if he is psychotic today or not.

Q Is it your understanding that George Dunleavy is claustrophobic?

A Well, this is another---this is another term that I learn very well in this hospital, not before. Yes, that's what he says.

MR. GOETTEL: Do you believe that he really is claustrophobic?

THE WITNESS: Well, my Honor, as I said, they will use any way to make them believe that they need hospitalization here because Matteawan still, to spite everything, is the one of the best places.

Q Are you saying that you don't believe that he is claustrophobic?

A I don't believe so.

Q What do you base that belief on?

A This is just my personal judgement. I believe that Mr. Dunleavy, with my personal experience, he is using it.

Q Mr. Dunleavy testified that you had a conversation with him in October of 1975 and you informed him that if he continued being involved in lawsuits, he might end up getting transferred back to prison. Is that accurate?

A Well, firstly, Mr. Dunleavy is one of my good patients, and I have every day, conversations with him. He is one of the---I am glad to have such a patient, too, because he is example for the others. He is excellent patient and if he involved lawsuit or not, I really don't care. As long as he fair, because I am fair. He knows that I am fair.

MR. GOETTEL: What she's asking you, doctor, however, is whether or not you told him that, that he would go back to prison if he kept up his legal activities.

Q I am not asking you whether you feel that he should go back to prison.

A I know he took it that way because he told me like that, too. It wasn't that way, but if someone is like I said, if someone who is not psychotic but he takes the attention, he might get back to prison if he is not psychotic. Not because of what he is doing.

MR. GOETTEL: What you are suggesting, doctor, is that the high degree of intelligence and organization portrayed by Mr. Dunleavy's legal papers argues against any claim that he is, in fact, psychotic?

THE WITNESS: No. Whether he is intelligent or high level brightness he is showing not to be with his being psychotic or not. What I am saying is that Mr. Dunleavy is, could be, again bright, very intelligent, but he could be psychotic, too.

To my opinion, he is not psychotic. Whatever he does, whatever his function is, nothing to do with his being psychotic. I don't use any patient, why I am keeping Mr. Dunleavy since then, on my ward. I don't use any other values to make my decision for my patients being psychotic or not.

Q Are you saying then that if Mr. Dunleavy became involved in litigation that he would bring himself to the attention of people at Matteawan and because he became more visible, he might be transferred back?

A Well, as I said, with Mr. Dunleavy, I usually---Mr. Dunleavy and my other patients, I usually sometimes have daily conversation. Some of them since here is just conversations. Some of them I sincerely advise. This is nothing to do officially what I believe that if I evaluate him, his mental capacity. This will affect to my decision. If you are asking, no.

Whatever he does is nothing to do with my decision. During one of my conversation about maybe this last six months, we have four, five hours, maybe ten hours conversation. We just informal conversation. We sit here like that on the ward and we talk, everything.

Q But in this informal conversation, have you ever said to him, "If you keep being involved in these lawsuits, you may end up back in prison."?

A No, it is nothing to do. This is not a threat. This is nothing to do with officially or anything. This could be---if I made such a remark or not, I might. This is sincerely that I believe that if somebody is not pyschotic, if somebody is getting the attention all the time, all the time, is my sincere advice to him that don't take the attention maybe.

Q You might have made that kind of a remark to him as a warning?

A I really don't know. I might do it just as friendly advice. But he might take it threat or something like that which he knows that I don't do that. But he believes that I am influence of the administration and this is his way of thinking, because I know George.

He thinks that I like to have him different way, but because of the pressure of the administration, I am changing my decision or I am a little bit afraid. Administration, they don't put any pressure to our judgement, I assure you.

Q You stated that you felt that Luis Poveromo was not psychotic today?

A Today is not. But yet I know that if I sent him to the prison system, he cannot take the pressure there. This is another thing that which way you like to go.

As soon as I send Luis to the correctional facility and the pressure he will get there, he might even, you know, act more than psychotic and injure somebody or himself. I know that. That's the way you have to use your judgement.

Q So for that reason, there are some individuals who are not psychotic that are at Matteawan that you would not send back because you feel---

A This should really shouldn't be criterion because we accept that prison system should be wonderful, they shouldn't have such an association pressure.

Normally you have to accept like that. But on the other hand, you know that there are a lot of pressures there, that certain people cannot take it like as maybe you can question Gully. He might have trouble there, too, you're right. But this is not the criteria really. I puzzle you.

Do you want me more explain clearly?

Q What is the criteria then? On the one hand you seem to be saying that you---

A Well, if we think that this patient or this inmate, if he goes to the prison system, he cannot function in there, then we have to have a thousand patients here, even two thousand patients because they may have on the population of the prison they cannot function there.

We have to then we will be more flexible and help them and house someplace else. We don't use this criteria. Our criteria, like I said, my criteria is I judge them being psychotic or not.

If their mental capacity is not impaired to adjust themselves to the reality at that time, I use this criteria. If they are in full contact with reality, then this is as simple as they are mentally still need some support, therapy, hospitalization.

Q Is it your understanding that there are plans in your future to transfer large numbers of patients out of Matteawan back to prison?

A Can I not---this is one question I would love to answer, but this is very deep, and intelligent question and I don't know---I don't like to talk about the efficiency of this place or prison system or mental hire system because I feel very pessimistic what's going on and I'd really rather not to answer much.

I really don't know what future will bring.

Q I'm talking about within the next month.

A Next month is large amount of patients will go, etc.?

Q I am wondering if there are any plans within the next month to transfer large numbers of patients out of Matteawan and back to prison.

A Not that I know. Only is a few gossip I hear that newspaper writes some patients going to the Otisville, etc. Not other than that, I don't have any idea.

MR. GOETTEL: I don't think you ought to get off to the possible changes in the entire system which have been rumored. I think the Governor made some reference to them.

THE WITNESS: I'd like to talk with you privately. But as I said, I'd rather not answer here.

MS. BLOOM: I have no further questions.

MS. SILVERMAN: I have nothing further, your Honor.

MR. GOETTEL: You are excused and the hearing is adjourned.

(Whereupon the hearing was adjourned.)

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CERTIFICATION

I, MAUREEN KRAMER, a Shorthand Reporter and Notary Public of the State of New York, do hereby certify:

That the foregoing is a true and accurate copy of the minutes taken by me.

Maureen Kramer

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
--x

HECTOR CRUZ, MATHEW GULLEY, CARMINE
PERRELLI, individually and on behalf
of all persons similarly situated,

Plaintiffs,

-against-

BENJAMIN WARD, individually and in his
capacity as Commissioner of the New York
State Department of Correctional Services,
VITO M. TERNULLO, individually and in his
capacity as Director of Matteawan State
Hospital, LAWRENCE SWEENEY, individually
and in his capacity as Chief of Psychiatric
Services at Matteawan State Hospital,

Defendants.
--x

MARCH 10, 1976
U. S. Courthouse
Southern District of New York
Foley Square - Rm. 503
New York, N.Y. 10007

Before: GERALD L. GOETTEL, U. S. Magistrate

Appearances: JANE E. BLOOM, ESQSS.,
Attorney for the Plaintiffs
Mid Hudson Valley Legal Services Project
50 Market Street
Poughkeepsie, N.Y. 12601

LOUIS J. LEFKOWITZ, ESQ.,
Attorney for the Defendants
New York State Department of Law
Two World Trade Center
New York, New York
BY: ARLENE SILVERMAN, ESQSS., of Counsel

Gerald Beattie,
Reporter

THE COURT: Are you ready to proceed, Miss Silverman?

MISS SILVERMAN: Yes, Your Honor. We call Dr. Jack Wright to the stand.

JACK WRIGHT, having been first duly sworn by Gerald Beattie, a Notary Public of the State of New York, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS SILVERMAN:

Q Dr. Wright, are you employed by the State of New York?

A I am.

Q In what capacity?

A I'm Assistant Commissioner for the New York State Department of Mental Hygiene.

Q Do you have any specific activities with respect to any programs in the Department of Correctional Services?

A Yes. I am in charge of forensic services in the Department of Mental Hygiene. I am part of that responsible psychiatric service of the

State Correctional facility.

Q Does that have any relation to Matteawan State Hospital?

A Not directly, no.

Q Does it, at the current time, indirectly?

A I'm sorry. No. The Matteawan is operated by the Department of Correctional Services and a couple of months ago the Governor asked the Department of Hygiene if it would try and improve services, systems. Improve services in Matteawan, and part of that is, first of all, to recruit a Director for Matteawan, and pending such recruitment, I've been asked to go down there on a part-time basis to try to improve services.

Q I see. Doctor, what is your educational background?

A I was at the Medical School in Dublin. I was trained in England. I had my psychiatric training in London. I'm a diplomate in psychology pending from the Royal College of Physicians. Thereafter I practiced in London. I went to Canada where, among other things, I was Director of State Hospital -- Provincial Hospital. I beg your pardon.

Q Was that a correctional facility or civil hospital?

A Civil hospital. This is Saskatchewan Hospital, and I came to New York in my post as Assistant Commissioner in 1967.

Q And you have served in that capacity up to the present time; is that correct?

A Yes.

Q Since you have assumed, or since the Department of Mental Hygiene, at the request of the Governor, has assumed certain responsibilities with respect to the operation of Matteawan State Hospital, have any changes in the operation of the hospital been instituted since you came aboard, Doctor?

A One significant change is that we have brought in the team approach to treatment in an endeavor to do a number of things. One is involving all people connected with the patients in the process. Second, to try and break down some of these barriers between treatment and security. Thirdly, to publish responsibility for that -- the people on a given ward are to treat the people on that ward. A number of reasons of this nature. They are going on for the past three, four weeks, and suffering the anticipated labor pains.

Q This program has been only in for about a month?

A Yes. The eternal problems of professional discipline versus the generalist, and the doctor is the boss versus, he's the boss, and who runs things, these kind of issues that one expected.

MISS SILVERMAN: Your Honor, I think Dr. Sweeney has explained what makes up the team. We were going to stipulate to that.

THE COURT: I don't know. Dr. Sweeney testified, but one of the witnesses on Monday ---

MISS SILVERMAN: Dr. Fattory (phonetic).

THE COURT: Yes. He did.

MISS SILVERMAN: Would that be all right, to overlook that?

THE COURT: All right. Also, I don't know that that particular aspect of the case, except as it may bear upon Decertification decisions, has any particular relevance to the case.

MISS SILVERMAN: That was my next question.

Q Has that had any effect on the use of

Ward 21 or evaluations?

A Ward 21 is still being used for evaluations, but we are trying to work toward getting all evaluations done by the team on the particular Ward. Too, you know, at the present the psychologists' attention to one Ward may be having -- may be in therapy on Ward 21, who actually is on another Ward, and this divided thing that we are trying to bring together into focus.

Q Now, Doctor, could you explain the current programs at the State Correctional facility with respect to psychiatric care?

A Surely. First of all, these programs are operated by the Department of Mental Hygiene. This was not always the case.

Q How long has it been such?

A Several years. Several years.

Q I see. Fine.

A In each State Prison there is a Mental Hygiene Unit. They vary in extent. In some it is provided by people coming in on a part-time basis one day a week. Maybe the psychiatrist comes in two days a week, and we have full-time sociologists or sometimes full-time psychologists and psychiatrists. The extent of these reaches out to Attica where we have two full-time Board certified psychiatrists, one Ph.D. psychologist, and a nurse with a number of Master's and Bachelor degrees, and plus part-timers coming in. In Bedford Hills we have got one full-time psychiatrist, one three-fifths-time psychiatrist. We have one, two, three full-time -- full-time Ph.D. psychologists. In other places there's much less than that.

Q So, it varies from prison to prison, but generally there is some program available; is that correct?

A Yes.

Q At the Correctional facility. Now, in view of the psychiatric services that are available, is psychiatric medication available to in-patients there?

A Yes, with the usual reservations. The amount of psychotropic medication that can be given in a prison situation would be very different from the amount that could be given either in a mental hospital or, for that matter, in an out-patient community health center, but, yes, the capacity does exist to good medication.

Q And is that done?

A Oh, yes.

Q Are there any plans afoot to develope new or different programs for the Correctional facilities with respect to the development of pyschiatric care?

A Of course, definitely, and if I might explain.

Q Yes, please. That is why I asked.

A The present way in which services are provided in prison's world, in some respects, illustrates the historic way in which services were provided for the population at large. In other words, if you became mental you were sent to a remote mental hospital. You were treated, and upon discharge there were limited after-care services available. In 1963, early 1960's, the concept of community mental health centers was elaborated, and community mental health center idea talks about treating the patient in his community, and reserving hospitalization to those people who, first of all, need the services that can only be provided in a State Hospital, and secondly, to retain the person in that State Hospital only for so long as he is continuing to benefit from that, and as you know, the well-known institutionalized syndrome is perhaps more difficult of a condition to treat than the original illness, the old re-socialization of people who are -- spend a long time in the State Hospital, or, for that matter, any other kind of institution. The third thing then would be to return that person to his community with the adequate services available at this possible moment, consistent with good treatment. To apply that kind of line of reasoning to the prison system in New York, you have got a similar kind of situation to what historically prevail. There are services available in, "very much," "community in the prison community." The major focus of treatment is in the Hospital in Matteawan, and the Hospital is remote from prisons, and in that context, as you've got somewhat divided responsibility in that Matteawan is run by Corrections and Units and Prisons run by Mental Hygiene. If one applies the principles of community to the prisons, then one could create in the prison a "mental health center" and I am very much quoting. The providing of the same kind of levels of services are provided in the community mental health center, the out-patient care, the day-care basis, the psychiatrist, the educational training, the consultation, all of these are perhaps -- even in a few cases have some in-patient treatment in the Hospital Ward for specific time limits. Perhaps limited within the framework of emergency treatment that is provided for under the Mental Hygiene Law for three days or fifteen days depending on which part of the Mental Hygiene Law one is talking about. Putting these mental health centers into prisons would lower these four services, for people to be sent to that remote mental hospital called Matteawan. Now, let's take Matteawan. The principles that I'm talking about would prevail no matter who is running those services, both in the prisons, and in Matteawan. I can be run by Mental Hygiene, Corrections, contracted out and run by the State Bingo Commission. That is not the principle supplied. However, throughout the history of Matteawan there have been criticisms of the place for any other number of reasons ranging from understaffed, overcrowded, too much security to little security, and so on, and God knows we don't need to repeat those. Throughout history there has been a viewpoint repeated that the Department of Mental Hygiene should run Matteawan; that the Department of Mental Hygiene is in the business of running mental hospitals. Matteawan is a mental hospital, admittedly, for a specific type of person, but it should be run by the Department of Mental Hygiene. For one brief period of a year in 1926 it was run by the Department of Mental

Hygiene, but the year later, for reasons I have never been able to discover, the Legislature switched it back to Correction. I might say, as another side of this, that over the past several years starting with the Bagstron decision (phonetic), the Shuster decision (phonetic), the Kinsel Brenner decision (phonetic), and a number of others, both statutory and Court decided, charged that the Department of Mental Hygiene has taken over responsibility for treating people who had previously gone to Matteawan. For example, the defendant, the dangerous defendant, in 1971 because of the new Criminal Procedure Law which radically affects the Commissioner of Hygiene, had to receive incompetent defendants. We set up a Security State Hospital in the Department of Mental Hygiene called the Mid-Hudson Psychiatric Center. The Mid-Hudson Psychiatric Center is a pretty good treatment facility.

Q Would you get into that, bring us back to the program for the State Correctional Services?

A Surely. If the Department of Mental Hygeine can run a secure facility, and run a fairly good treatment facility, at the Mid-Hudson Psychiatric Center, then can it not also take over Matteawan and run a good treatment program for the convicted mentally ill?

If Mental Hygiene were to take over Matteawan, then the coherent integration between these units and the prisons and Matteawan and, for that matter, other parts of the Department of Mental Hygiene could be affected. The Governor in his State of the State message, and repeated in a bit more detail in his State of the State's Health Message, announced one, the closing of the Matteawan State Hospital; two, assignment of responsibility to the Department of Mental Hygeine, and that the Department will set up another facility wherever it is called for in another location, and three, the establishment of these mental health centers, some six or seven depending on how you count it, State Prisons.

Q Just to go into a little more depth about the six centers, would you describe what they will be? A little more detail?

A Well, let me describe how somebody in that situation would be, what would happen to a person who is mentally ill because of some kind of behavior manifested in prison. He would be referred to the Mental Unit. There he would be evaluated and -- incidentally, trustees are going to be adequately staffed. I am talking about social workers, occupational therapists, not just the psychiatrists and psychologists which we presently have. You would be evaluated and one of three conclusions could be reached as a result of that evaluation. First of all, there is no mental condition at all, and that there is no need for psychiatric intervention. Secondly, that, yes, there is a mental condition which can be treated by that Unit with the person remaining in the prison. Three, that there is a mental condition for which hospitalization is necessary, in which case the necessary legal procedures similar to 408 of the Corrections Law would be instituted to have that person committed to ---

Q The new Matteawan?

A Yes.

Q Wherever it will be?

A Yes.

Q Is that a target date, or has any of these programs gone into effect?

A We are unable to effect the program until such time as the new fiscal year, and new budgetary year starts.

Q When will that be?

A That is April 1st, the start of a new fiscal year.

Q Have the plans developed?

A Now, the planning for such a program, yes. For example, recruitment of potential staff in the units in the system is already taking place, and the nucleus of the staff. These are ready to go when various steps can be taken. For example, one of the things that we intend doing is trying to tie these units with the prisons up with centers, university centers. For example, that would make more desirable the work in a prison.

Q Have you been able to make any contacts?

A Yes. One example of this is at Clinton.

Q My question was ---

A For example, at Clinton, up in the north country, there is a tieup between Clinton and McGill in that the professor and forensic psychiatrist at McGill is going to be in charge of the unit in Clinton State Prison on tieup with a world renowned researcher, Bruno Cornea (phonetic), from Quebec. There is already a tieup to some extent between Attica and the University of Buffalo in the professor of forensic services. Nothing to do with State Prisons on that is going to go in effect aside from tieups with the university, the various county and law enforcement, and treatment people in the surrounding community would begin to tie in with Attica,and would tie in, et cetera. Dr. Cahill who is the Governor's specific assistant for health affairs has said publicly on a number of occasions that the State in providing universities both established and prior universities with large amounts of money, that it is valid therefore to require that these medical schools, universities, provide some kind of public service, and one aspect of that public service that Dr. Cahill has spoken about is services in the prisons.

Q What effect is this new program going to have on the inmates, or, I should say, patients currently at Matteawan State Hospital? What will happen to the people there now?

A Depending on the rate at which these things are developed, and the rate in which we can get the new units, because you don't just move in as of April 1st, whatever facility is chosen has to be made secure. You got to get the staff and so on.

Q I will stop you there, because I want to make one thing clear. Will these six new mini-clinics ---

A I haven't called them mini-clinics.

Q What did you call them?

A Mental health units.

Q All right. Mental health units. Will they actually be at the State Correctional facility?

A Yes.

Q They are an independent facility?

A They are operationally independent.

Q I mean physically.

A Physically they will be and, for example, at Attica where the start of this kind of thing is already in existence, we occupy the entire top floor of the whole building.

Q Is it in actuality operational at Attica, this new program?

A The new program isn't. I must emphasize that Attica doesn't have this program, but it's got the start of it because we have more staff there. Bedford Hills, the female prison, has some of these elements.

Q Going back to my questions, what effect will this new program, as it starts being developed, have on the current population at Matteawan, if any?

A It will have some effect because the more we develop these units in the prisons, the more people who are currently treated in Matteawan could be treated in the prisons. These units will have the effect of cutting down the need for Matteawan. You know, it can be said that some people are currently at Matteawan where, if they had that mental condition, just that mental condition, there would be no need for them to be in Matteawan, if they had, but to say that the same person can therefore be kept in a State Prison is an entirely different thing, and I don't care how adequate the services are in a State Prison.

Q Now, will the setting up of these various clinics affect the standard then of who will be at Matteawan -- no. Not affect the standards, but affect -- yes, will the standards change from Matteawan?

A First of all, it will have the effect of decreasing the need for Matteawan. For example, somebody in need of day-patient treatment could be given that day-patient treatment in the unit in the prison, but day-patient treatment requires, you know, full-time attention during the day, five days a week, that such person presently would go to Matteawan.

Q Now, the people who will be treated at these units, will these units also house people, or where will it be, send out patients?

A It will be non-inpatient. As I say,

we are only talking about the possibility of brief treatment limited for acute crises, stabilization, but such hospitalization would be in the general hospital, the treatment under the supervision of the psychiatrist.

Q The general hospital, or infirmary available at the Correctional facility?

A Yes.

Q Have any studies been done of the inmates at Matteawan with the view to implementing this new program?

A Yes. Evaluations of the people at Matteawan in terms of what kind of services would they need, given an ideal world.

Q Have you participated in such evaluations, or at least seen the results?

A I've seen the results, and, in fact, I arranged for them because I got a kind psychiatrist and psychologist who have nothing to do or with Matteawan State Hospital, people to go in and conduct these evaluations.

Q Have any conclusions been reached as to the type of individual currently being housed in Matteawan?

A Yes. Really, I suppose you got four different kinds of people. You got the person who needs hospitalization in Matteawan. You've got the malingerer. You got the person with some kind of -- I don't know, mental personality, whatever condition, disorder who, given alternatives, would not need to be in Matteawan, and then you've got the kind of patient who, as I said, were the alternatives available, for instance, the day care program that I referred to earlier, could continue in prison. To give you an idea of the kind of things -- given these units were in the prisons, and fully operational, which incidentally is going to take many, many months to achieve this kind of thing, we estimate that the new Matteawan, whatever word you want to give ---

Q Yes.

A --- would require something of the order of one hundred seventy-five, one hundred eighty beds.

Q I see. Now, Doctor, at the current time those are the individuals at Matteawan with -- who have been sent to Matteawan on a two certification?

A Under 408.

Q Under 408 -- withdraw that question.

Doctor, we have, during the course of this hearing, come upon various inmates who were returned to a State facility, and within about three or four weeks the State Correctional facility, and within three or four weeks were returned to Matteawan State Hospital. In your view, Doctor, does this necessarily indicate that the decision to transfer them out to a State Correctional facility was medically in error?

A I don't think it says anything about that. Obviously, it could be medical error. Certainly, it could be that the person relapsed. It could be the perception by one place is different from another. We have this all the time in State Hospitals in which two doctors in the community -- two physicians certificate somebody into a mental hospital, and when he gets to the mental hospital the mental hospital says he doesn't need to be here. He can be treated in the community, and the rampant paranoia that follows from that sort of division. It could be that the person is a malingerer and is not mentally ill, but one of the problems of malingerers -- there is a number of them. One is to demonstrate to somebody's satisfaction that they are malingering. Secondly, to cope with the person who is malingering, depending on which way he malingers.

It is one thing to talk about somebody who is making suicidal gestures, and that imposes and very great responsibility upon a prison. Somebody who claims to be the Blessed Virgin sees a psychiatrist, but when he talks before his peers is perfectly normal.

Q Does a person with an antisocial personality require treatment at Matteawan State Hospital necessarily?

A Oh, boy. Antisocial personality ---

Q Why don't you ---

A I can't summarize the Encyclopedia Britannica in thirty-five words or less.

Q State, Doctor, briefly, what does the term mean?

THE COURT: Why don't you ask him whether he accepts it as a reasonable classification under the term: psychiatric procedures?

THE WITNESS: I teach courses in this in the New York School of Psychiatry, and the -- I think the term that we are using is psychopath. This is the term that is generally understood. It no longer exists in the official medical literature. It is normally personalty disorders, anti-social personality disorder, X type, a number of given types. Being a psychopath depends where one is. In Germany it is a pathic psyche. it has a definite meaning, and it means any mental illness, and this is -- obviously in this country, from Boston Psychopathic Hospital, it was a psychotic illness. It was a mental hospital. Syracuse Psychopathic in this State. My own personal way of looking at psychopaths goes along with Henderson's classification. Henderson says that the psychopath is someone because of a built in constitutional disorder, personality, or character, bringing grief to either himself or to his environment.

Q Would you classify this type of individual as one with a mental disease?

A May I come to that?

Q All right.

A You got four different kinds of psychopaths. You got a aggressive psychopath; the sexual psychopath; you got the psychopath, men or women, who prey on victims, or pathological liars, or he sells the Brooklyn Bridge to the tourist, or whatever kind of thing of that nature. In other words, you got the inadequate psychopath who may have it between the ears, but is not able to survive in the society in which he lives, and is a burden in that society. You have the creative psychopath because his disorder channels his life's activities into a field that is creative by the standards of the society of the time. For example, it can be argued, and why not, that Lawrence of Arabia could create -- regarded as creative psychopathic. He had that continued difficulty of maintaining a normal life. So, he did all these good things in the Middle East. Joan of Arc is another one. I think other, more current people, but I'd hate to name them in this context.

Q Even a psychopath with antisocial personality, is this type of a person necessarily suited for hospitalization in an institution such as Matteawan?

A Let me answer that indirectly. The question is, is it a mental disease or not?

Q Is there a difference from mental illness?

A Yes.

Q All right.

A Now, in this stage, in the -- I don't know which case it was, Bodi (phonetic) or Lee (phonetic), I'm not sure which, a person diagnosed as a psychopath was discharged from a hospital even though he was dangerous, or the people thought he was dangerous. He violently assaulted a child. The child's family sued the State, and the Court of Claims awarded damages against the State. The State appealed, and the Appellate Court reversed the decision because it said that the term psychopath is not suffering from a mental disease within the definition required in the Mental Hygiene Law. In another subsequent case, the Matter of Miller versus Sherman in Rochester, a very learned decision by Judge Bloom implicitly -- and I think this gets into all kinds of semantic swamps, but I think it is germane. Implicitly differentiated between the mental disease and mental disability, and he also said that a psychopath is suffering from a mental disability because the point in this case in point was whether somebody should be released if he is dangerous, and not mentally ill, and the Court's testimony from the psychiatrist was that he was not mentally ill because he did not have a treatable mental illness. So, the question is, is a psychopath treatable? No argument ---

MISS BLOOM: I would request that Dr. Wright restrict his comments to his medical views as opposed to legal analysis.

THE COURT: However, I think we have got in beyond it now. We will come back to medicine. I think the cases speak for themselves. The question, Dr. Wright, take up where you left off.

A In my view?

Q Yes.

A The treatment of a psychopath is possible, but is extremely difficult in the situation in which we live. I am talking of the constitutional and the legal situations in which we live.

THE COURT: How much longer do you have to be with your examination?

MISS SILVERMAN: Five more minutes with Dr. Wright and one more witness.

THE COURT: All right.

MISS SILVERMAN: Go ahead, Dr. Wright.

THE COURT: We will take a brief recess, five or ten minutes.

(Whereupon a recess was taken.)

THE COURT: Back on the record.

Q If someone is a psychopath, or has any antisocial personality, Doctor, does such a person necessarily, or should such a person be at Matteawan Hospital?

A Not necessarily, but equally not necessarily should he not be at Matteawan. Let me explain by saying that the subject person in the disorder can get mental illness just as anybody else. In fact, some studies show they get it more often. Definable mental disease could and should be treated at Matteawan, or wherever else. One of the points where the personality disorder is, is that they require medication rather than treatment because what I was saying earlier about the grief that they bring either to themselves, or to their environment, tends to lead to an environment manipulated for "psychotherapy or behavior models," these kind of things. There are a couple of places that

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were successful, at least more successful in treating whatever you mean by the word "psychotic," and I'm not sure if I know what the order of treatment is. One of these is at Hersted Vester ---

MISS BLOOM: I request that the witness refer to the question asked, which is in response to Matteawan.

THE COURT: Was your question confined to Matteawan? I think it was. You asked whether persons like that should be at Matteawan.

Q All right.

A And I say, not necessarily. They can be, or also cannot be, but what I am saying, and to put it specifically and precisely, the fact that a person has got an antisocial personality does not mean that he must be in Matteawan State Hospital,or some kind of equivalent program.

MISS SILVERMAN: I have no further questions.

CROSS-EXAMINATION

BY MISS BLOOM:

Q Dr. Wright, are you familiar with the procedure that is currently used at Matteawan in evaluating patients to determine whether or not they should return to a prison?

A Yes.

Q Can you explain first, who initiates the evaluation, and show that schedule?

A I think they schedule on a rotating basis, that a person every so often is evaluated. There is also the ongoing evaluation done by the staff visiting the Ward, or people on the Ward, the teams that we have created. One of their specific tasks is to both initiate and effect evaluation of whether a patient can be certified back to prison, or whether, he or she, needs to be treated still in Matteawan.

Q How often is a formal evaluation conducted to determine whether or not a patient should be returned to ---

MISS SILVERMAN: I object to that question because I don't know that there was any testimony that there is such a formal evaluation. I understand, too, ongoing evaluation of persons if that intervening certification ---

THE COURT: I don't know that either of these positions is correct. The testimony is that there are periodic evaluation and evaluations are not generally initiated for the term decertification, but if an evaluation is indicated, no further need for treatment, this can result in sending a prisoner back to prison.

MISS SILVERMAN: Yes.

THE COURT: That has been the testimony.

MISS SILVERMAN: That is my understanding.

THE COURT: I am not sure that Miss Bloom accepts it.

MISS BLOOM: There is an attempt to indicate there are specific evaluation times where these people who do go to Ward 21, or ---

THE COURT: If you mean they are evaluated on a regular basis, the testimony has not been that. All the Doctors have been rather vague as to how often people are evaluated, who schedules the evaluation, why they are scheduled, when they are scheduled. About the only thing they have agreed to is that if you don't want to get re-evaluated out of the hospital, you are better off keeping out of fights because fights bring you to the attention of the authorities and the power structure and causes you to be re-evaluated, and re-evaluation can result in your being sent back to prison. Would you not agree that that is the testimony so far?

MISS SILVERMAN: With one slight modification. I think that Dr. Sweeney has testified that if someone gets into a fight, you would want to know why, and that would cause the evaluation. It might initiate the evaluation. Someone in the mental hospital under doctor's therapy ---

THE COURT: I don't recall him saying that. Maybe you did.

MISS BLOOM: It seems to me to be clearly appropriate what Dr. Wright perceives the structure of the system to be.

THE COURT: Yes.

Q Dr. Wright, is it your understanding that a list of patients is prepared in the administration building, and doctors are assigned the patients to receive on a periodic basis?

A Yes.

Q Would a psychiatrist ever have occasion to see a person for evaluation that was not on that assigned list prepared by the administration?

A Yes. A number of situations -- for example, some relative might write to the hospital and say, please, can my relative go back to prison, or stay in Matteawan, or for some reason like that. So, in those circumstances an evaluation would be requested that might not be -- another reason -- there are other reasons for evaluation apart from just getting into a fight. One is retention in Matteawan is in issue, Court retention. Secondly, is when somebody is either leaving, or has been conditionally released, and in those cases a person would be evaluated for disposition following leaving Matteawan, or leaving the Correctional system altogether for that matter.

Q What is your understanding of the documents that are consulted by the doctors that do the evaluation on the patients?

A My understanding is that they use the clinical history mostly. Their entire case record is available to them when they make this evaluation which, incidentally, includes criminal and social and arrest, and those other things.

Q Would you document such use of force forms be available?

A They are. Those are always included in the record.

Q Based upon your observations, how long do these evaluations normally take in time?

MISS SILVERMAN: Which evaluation?

MISS BLOOM: Formal evaluation of the patients.

THE COURT: Not including those which are required by law?

MISS BLOOM: That's right.

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THE WITNESS: I wouldn't have any idea as to a mean time. Some of them are more difficult than others. For example, the evaluations that were done by the Department of Mental Hygiene, some of them took a quarter of an hour. Some of them took an hour. It depends on -- first of all, on the patient. Secondly, on the evaluator. It depends, again, on how well one knows the patient. If you had had him in therapy for the last twelve months, then an evaluation in that context doesn't take as long as somebody who you have never seen before.

Q Is it your understanding that there are written guidelines describing the criteria to be used in decertifying a patient?

A No.

Q Is it your understanding that there are any generally accepted criteria that are used in determining ---

A I think the generally accepted one is so vague as to be -- what can one say, that it would be very difficult to put it down in one, two, three, four terms. In need of hospitalization is the legal criteria in 408.

Q I refer now to what criteria you used in determining whether to send a patient from Matteawan to prison.

A I think a -- number one, does he need to be in Matteawan. Two, if he does not need to be in Matteawan, can he function in a prison situation with whatever resources might be available, in those resources. As I referred to earlier, a person's correctional status with respect to the mental status. For example, a patient on -- we have a case, a patient was on very substantially high doses of phenothiazines on which he was functioning perfectly well, and could go back to prison. However, while one could say that in a State Hospital to put that person back home, and attend a clinic does not mean that you could send that person back to prison, and I therefore suggested that before certification back to prison, the dosage of this be weaned down to a point that made it valid. You got the obvious difficulty of how high a dosage to give in prison. The fact that high dosages were high dosages, but the whole question of the subculture of the prison, the value that subculture put on medication, and so, questions of seeking it, and selling is important.

Q Go ahead.

A Aside from that is the possible use of long acting intramuscular injections. Are you familiar with Moditan (phonetic)?

Q No. You can explain.

A Moditan is a long acting, or at least slow releasing phenothiazine, "tranquilizer," a term which I hate, but the phenothiazine usually has to be given in dosages three times a day, and this results in certain logistic problems and general psychiatric problems. If a patient isn't in the hospital, and he doesn't take his medication, then he becomes unglued. One advantage in this is -- has been the introduction of the long acting phenothiazines which one injection twice every two weeks has the same effect as X milligrams of medication three times a day during those two weeks. So, we have got the possibility of local delivery of medicine. Apart from the prescribing of it being much easier, these long acting injectionables can be provided. You are limited in that, of course, because there's only one of them, and if the patient isn't responsive to that particular preparation, then it can't be used.

Q Is it your understanding that it is currently the practice at Matteawan to decrease a patient's medication to a level that that patient could receive at a Correctional facility before making a decision whether or not to return that patient to -- send that patient from Matteawan to the prison?

A Yes.

Q It is the policy?

A Yes, at least insofar as from the time I have been there, and in reviewing these medications I look at -- reviewing these issues I look very carefully at what medication a given individual is on.

Q Are you familiar with the medication Tofranil?

A Yes.

Q First of all, is this a medication that is available to inmates at prison facilities?

A Tofranil can be given at facilities.

Q Could you give a prisoner fifteen milligrams, three times a day?

A Yes, but it's a high dosage. It could be done, but ---

Q Is it normally given to an individual at this high dosage in a prison?

A I don't know the specifics of prison practices.

Q Are you familiar with the medication Sparine?

A Yes.

Q Is that medication available to inmates at Correctional facilities?

A Yes.

Q Would it be advisable to give a patient dosages of Sparine, one hundred milligrams, three times a day, and two hundred milligrams in the evening?

A That would be perfectly all right.

Q That would be all right?

A Sparine is one of the weaker phenothiazines.

Q In determining whether or not to decertify a patient, is it your understanding that the psychiatrist will consider whether or not that patient will be able to adjust to prison life?

A Yes. "Adjust to prison life" is such a broad and loaded phrase. Adjust to prison life?

Q That the patient will be able to adjust favorably so that the patient is not returned from prison?

A Will not relapse to mental illness?

Q That's right.

A Yes.

Q How is that decision made in a relatively brief interview of the patient?

A Well, the psychiatrist knows the mental state of the patient, and secondly, he has some idea of what the environment in the prison is.

MISS SILVERMAN: I might add, Your Honor, that Miss Bloom's question, how that determination is made at a relatively brief interview, and I don't know if that is the only basis we review. It is one of many things that might go into the determination.

THE COURT: Your objection is noted.

Q Based upon your medical and psychiatric experience, do you believe there are individuals who are not psychotic and yet could not adjust to prison life?

A Yes.

Q And those individuals belong at Matteawan?

A Some of them may, but by no means all. Now, see what you are getting into is something which I am not theoretically an expert in, which is how you run a prison. Justice Aside, in one of the prisons currently being developed is a program for people who repeatedly run into difficulty. Now, difficulty tends to be defined in terms of security, or tends to be defined in terms of a disciplinary response. You know, the standard of the establishment versus the civil rights action, and what this program is, is an attempt to handle those people in a Correctional situation, use Correctional Officers, but to use principles that might derive from psychology. That doesn't mean it is a mental program by any stretch of the imagination. The key modifications are, group sessions, group leaders, Correction Officers as group leaders, patients, government, all these kinds of things that perhaps initiate the start of -- is a result of the skills that were derived in the field of psychiatry or psychology. Certainly it does not mean that it is a mental program.

Q Again, based upon your medical and psychiatric experience, do you believe that individuals who are ordinarily aggressive on a regular basis, either attempts to harm themselves, or others, belong at an Institution such as Matteawan?

A No. I think of the idea that because

somebody is aggressive that they are there for mentally ill is just as invalid as saying that because somebody is mentally ill therefore they are aggressive, and God knows, all society is familiar with both of those views, the result of a particularly aggressive individual. One cause for this is epilepsy. Episodes of violence can be symptoms of epilepsy. Now, should an epileptic be in a mental program? I don't think so.

Q So, a man in a program such as exists at Mattewan, who on a regular basis attempts to harm himself ---

A If that harming of himself derives out of a mental illness, yes. If it is a manipulative act to get out of a prison which he finds uncomfortable in order to get in a hospital, or better visiting hours, or any of a whole lot of things like that, then I'm not sure whether that is, one, a mental illness, and two, in the patient's best interest to gratify the manipulative behavior because that leads to further manipulative behavior, and makes the underlying condition that much worse. That doesn't mean you shouldn't address the underlying behavior. Do people commit suicide for three reasons ---

Q Do you believe that a healthy, well adjusted individual will attempt to stay in a Correctional facility for a long period of time, or a short period of time?

MISS SILVERMAN: I would like to have that question rephrased.

THE COURT: Rephrase the question.

Q Do you believe that a well adjusted human being will attempt to do whatever he, or she can to stay in a Correctional facility for a long period of time, or do you believe that a normal behavior for that individual will be to try to get out of a Correctional facility as soon as possible?

MISS SILVERMAN: I object to the question. I don't know know what "well adjusted" means.

THE COURT: I think what she is asking is, is it not normal for persons to want to get out of prisons rather than to stay in them.

MISS SILVERMAN: Well, the answer is somewhat evident.

THE COURT: I think it is, but she is leading somewhere.

THE WITNESS: I think we can all see that, but given that as a proposition, yes.

Q All right. Will an individual -- there has been some testimony in this case that individuals who are incarcerated at Matteawan are paroled on a less frequent basis than individuals incarcerated at Correctional facilities.

A Yes.

Q Based upon that assumption, would you consider an individual who wanted to go back to Matteawan, or stay in Matteawan as being an individual -- as being manipulative, and normal, or abnormal?

A I think it depends entirely upon the individual. If he's one week away from the parole date, I think it would be folly to get yourself into Matteawan because everybody knows -- if on the other hand, you are doing a life sentence, then maybe getting into Matteawan might have some virtues for that individual.

Q Let's assume the following facts. We'll assume that an individual who is incarcerated for a term of fifteen years will be released, conditionally released in ten years. Let's assume that it will be normal for in individual given a fifteen year sentence to be paroled in a matter of seven or eight years, and let's further assume that if an individual is placed in Matteawan, that individual will not be paroled, but would rather stay there until he or she received a conditional release ---

MISS SILVERMAN: I would object unless the hypothetical is related to a particular case in this action, because I have read the rules this morning, and I read McCormack, and as I understand it, a hypothetical has to bear some relation ---

THE COURT: I recall one particular prisoner who falls into this pattern.

MISS BLOOM: One is Gulley.

THE WITNESS: Whereabouts in this hypothetical, and I don't know the individual concerned. Whereabouts in this hypothetical case is the seven, eight years parole eligibility date?

Q Let's say the individual has served five years, and if they stay at Matteawan the likelihood would be that they will be incarcerated for five more years. If they had never been at Matteawan the likelihood would be that they would stay for two or three years.

MISS SILVERMAN: I don't understand this conjecture on the part of Miss Bloom. First of all, the figure seven or eight years is a figure that is unfamiliar to me. I don't believe the Parole Board had any criteria to for shortening a fifteen year term; that there is any particular date that any person will be paroled from an Institution. The Parole Board -- number two, we have now reached a point where somebody is going to be paroled at seven or eight years, and now we are in the fifth year, and in the hypothetical it is going to be five more years before they get paroled. I don't understand the question.

THE COURT: Is it correct that a man becomes eligible for parole when he has completed one-third of his maximum sentence?

MISS SILVERMAN: That is not the law. The law in the State of New York is that a person is eligible for parole after completing one year of his sentence except where a trial judge has set a particular maximum, and that may be done in certain circumstances which are set out in the Court of Criminal Procedure. It's actually the new New York Criminal Procedure Law.

THE COURT: If a maximum has been set, or a maximum and minimum has been set, at what point are you eligible for parole?

MISS SILVERMAN: You are eligible for parole after the minimum parole. If no minimum has been set by the Court, you meet the Parole Board in ten months, and the Parole Board sets the date, and the next time they meet -- it will be set by the Parole Board. I believe they meet at least once every two years. That is set out, I believe, by the Correctional, as well as the Penal Law.

THE COURT: I don't know that there is any reasonable purpose in pursuing the situation much further. The Doctor has already testified that if a person has a realistic possibility of getting paroled if he is not at Matteawan, and if he never left, is claiming a condition requiring hospitalization in Matteawan, it is more reasonable to believe that he is not manipulating than if he were a long-term prisoner who didn't have a possibility of parole.

Is that a correct summary of your position?

THE WITNESS: I think so, and I might also add that there was -- I don't know whether it was a misstatement, or my misperception of your statement of that. But to the fact that someone was at one time in Matteawan it does not necessarily mean that he is not going to get paroled, and must wait for his conditional release date. I believe the situation is rather that people are not paroled from Matteawan.

In fact, there are a number of cases with which I am familiar in which these people have been certified back to prison three months before parol eligibility, and have been subsequently paroled after three months thereafter.

Q It is your understanding that people are generally not paroled from Matteawan?

A My understanding, yes.

Q Now, Doctor, you testified that you had worked at several Mental Institutions; is that correct?

A Uh-ha.

Q I would like to note first of all, what your understanding is as to the purpose that a strait jacket serves.

A Protect self, and others from harm.

Q Would a strait jacket be used for the same purposes in a civil and criminally mental institution?

MISS SILVERMAN: I object to that question.

THE COURT: Why don't you rephrase it in the terms, is there any different usage of a strait jacket at Matteawan that one would anticipate at a civil hospital. Is a strait jacket used for any purpose at Matteawan that it would not be used for at a civil institution?

A Not to my knowledge.

Q Have you ever seen a patient discharged from a civil mental institution wearing a strait jacket?

MISS SILVERMAN: I object to that question.

THE COURT: I will allow it.

THE WITNESS: Allow the question or the objection?

THE COURT: I will allow the question.

THE WITNESS: No, I have never seen a patient discharged from a civil hospital wearing a strait jacket.

Q Do you think that it would be unusual to see a patient discharged from a civil, or criminal mental institution wearing a strait jacket?

A I think it would be unusual, yes.

Q If you saw an individual wearing a strait jacket that was discharged from a civil or criminally mental institution, would that cause you to believe that perhaps the individual had not fully recovered from that mental illness?

A Not necessarily. Would I believe that, certainly not necessarily, because now we are going back to precisely what we are talking about, primarily that aggressiveness and hostility is not a sign of mental illness, that while you can be aggressive and mentally ill, you are not necessarily mentally ill -- certainly mental illness is not regarded as aggressive, nor is aggressiveness regarded as mental illness.

THE COURT: Miss Bloom, I don't think it is fair to equate the realities of a civil hospital where one goes back to the delights of civil life with the realities of a prison hospital where one is sent to prison. You cannot equate the same.

MISS BLOOM: There is an assumption that one is only released when one has recovered.

THE COURT: That I understand, but the fact that a sane, or rational or reasonably rational person takes an altogether different approach to being sent back to prison from being released from his -- to a private life is also quite obvious.

MISS BLOOM: Yes.

MISS SILVERMAN: I might say, Your Honor, I have another witness that was supposed to be here at ten-thirty, and it is Dr. Feldman, and he has not arrived yet. He is coming from Beacon.

THE COURT: How much longer will you be, Miss Bloom?

MISS BLOOM: I have only about fifteen or twenty minutes.

THE COURT: All right, take as long as you like.

Q You indicated there is going to be a change in the operation of Matteawan?

A Yes.

Q Has money actually been approved by the Legislature to the effect that the State ---

A The State budget has not yet been passed. The Governor has read in the State budget yesterday monies to effect the transfer of Matteawan to Mental Hygiene.

Q You indicated that the fiscal year began January 1st. Do you believe that you will will know whether or not the Legislature will allocate monies by April 1st?

A There are two things, if I might, one is the Governor's budget which is submitted to the Legislature in January, and in which some three weeks ago an amendment to the Governor's budget was announced providing money for this purpose. There is secondly the supplemental budget which, of course, does not have to be approved prior to the start of the fiscal year, and it is possible that more money will be appropriated in the supplemental budget which will be sometime early May that the supplemental budget will be passed. That's usually the last step taken by the Legislature before dissolution, and dissolution this year is likely to be early.

Q If the money is appropriated as of May 1st, this year, when would the plans that you suggested become fully operational?

A Fully operational is difficult to say, but we would expect that the transfer of patients from Matteawan to whatever institution is set up would begin somewhere towards the end of this year, and be completed probably by the early part of the following year. You can't just take them en masse and bring them en masse. If, so far as the units in the prison that I have referred to concerning a start on that would be made immediately, full implementation would depend on the rate at which we were able to recruit people. My guess is that it would not be fully staffed. You know, not all staffed at all institutions during this coming fiscal year, and that probably to get it to full operation would go into the following fiscal year, five months.

Q Sir, we are talking about 1977 at least?

A We are talking full implementation in 1977, partial implementation to a very substantial degree in fiscal -- yes, in this coming fiscal year. We have got the complete restraints of the legislative processed.

THE COURT: Do you expect that this proposal will increase the total amount of State expenditure for treatment of mentally ill prisoners, or will the provision not dramatically increase the amount of money necessary which, as you know, is a prime criteria of whether or not the Legislators will pass it?

THE WITNESS: Certainly there

two answers to your question. One is there will be a one-shot expense to make sure we start out, the construction expense, personnel, if it takes a million dollars to secure something you can't possibly spend a million dollars in a week. That is the first big increase in cost. Insofar as the operational aspect of it, while it will be higher, it will not be substantially higher because the more efficient use of resources to put ten staff in the six prisons is completely different from putting sixty staff in Matteawan.

THE COURT: What will become of Matteawan when this occurs?

THE WITNESS: The intention as I understand it, the Governor announced that Matteawan would be on a Correctional basis rather than on a mental basis would be used to relieve overcrowding in prisons by some four hundred patients.

THE COURT: Continue to be a

Correctional facility, but not for persons with mental illness?

THE WITNESS: Right. As you know, Matteawan is part of Fishkill. There will be a mental element there. The diagnostic and evaluation unit will probably continue for some time until these other things take up that kind of job.

THE COURT: All right.

BY MISS BLOOM (Continuing):

Q Now, you mentioned briefly kinds of programs currently available in Correctional facilities with individuals with personality problems.

A Yes.

Q Could you detail with a little more specificity the kind of program that is currently available for individuals at the Correctional Institutions with mental problems?

A I thought I did this earlier, but let me try it again. I mentioned Attica, the number of -- kind of staff that we have at Attica. I mentioned Bedford Hills.

Q Right.

A Let's take Ossining.

Q Let's go back to Attica. You indicate there are two psychiatrists and one psychologist?

A Right, and a nurse.

Q And one nurse.

A And some part-time.

THE COURT: Why are we spending so much time on this. We have to treat the situation as it presently exists. If there is a sufficient difference between the ---

MISS BLOOM: This is what presently exists.

THE COURT: Coming back to the present situation, you are not asking what presently exists. I understand Attica is not a typical facility. Attica is the only place that has two full-time psychiatrists.

MISS SILVERMAN: Our position is that -- Miss Bloom would like the Court to believe that you can't give people -- unless people are one hundred percent you can't send them back to State Prison, and I brought Dr. Wright to explain that policy in prisons. I plan to expand ---

THE COURT: The plan to expand has not entered into it. This issue is moot now. The fact that Attica may be able presently to provide similar type of treatment doesn't mean that if someone goes to Clinton, or Greenhaven, one is going to get it.

MISS SILVERMAN: There are psychiatrists available, as I understand it, at all facilities.

THE COURT: On a call-in basis from outside.

MISS SILVERMAN: Not necessarily.

MISS BLOOM: What I would like to pursue at this point, what specifically is available at Institutions, an attempt to show that it is not -- clearly not the same.

THE COURT: He told us that at the very beginning of his testimony. He went down the run down of what they have at various places, and I think that he acknowledged that while there is treatment available at prisons, at the present time it is not as extensive as treatment that is available at Matteawan State Hospital. That is the way I understand your testimony.

THE WITNESS: Perfectly correct.

MISS BLOOM: The State's position ---

THE COURT: The State's position is, they say in the first place you have no constitutional right to treatment as a prisoner. In any event, they say, but if you do have a right, it falls within some very rough framework which are meant by the existing facilities at the prisons, and if we are wrong on that ground, then you are entitled to more than the prison gives you, it is unfortunate because we are about to change the entire structure so that there will be Mental Hygiene Units at every prison.

MISS SILVERMAN: Six, I believe.

THE WITNESS: I think six major.

THE COURT: I believe six major prisons.

THE WITNESS: Greenhaven and Ossining.

THE COURT: Ossining is presently only an evaluation facility. It is a reception center. On the last point I think the case law is clear that until such time as the State actually affects the changes, its proposing doesn't moot the action.

MISS SILVERMAN: Your Honor, I am not trying to suggest that, I am saying that these proposals are not going into operation. I don't mean to suggest to Your Honor that we do not feel -- we do have a program, a mental program at State Correctional facilities, and while I am strongly saying, that people can be released from Matteawan, that we do have out-patient service at State Correctional facilities. That they can be somewhat limited, but they do exist, and therefore people can be released on the drug that Miss Bloom mentioned.

THE COURT: I am aware of your position. I just restated your position. What I haven't done, that you are correct as a matter of law.

MISS SILVERMAN: I would think it would be a factual issue as to whether people can be released from Matteawan; they are entitled to their psychiatric treatment.

THE COURT: It is more than factual. It happens to be on a patient-by-patient basis. There are certain patients that require ongoing medication who can never be returned to the prison with the least amount of facility. On the other hand, there may be patients included in this class who cannot be adequately treated at any of the existing facilities, or at even Attica, and that is part of what we are doing here.

MISS SILVERMAN: I have no objection to the question because as far as I am ---

THE COURT: I think we are going back over ground that has already been covered.

MISS BLOOM: I don't want to do that, but it seems to me that so long as the State is asserting that the facilities that exist at the Correctional facilities are adequate to meet the needs of the inmates referred back there from Matteawan, that it is incumbent upon me to establish in a little more detail exactly what an individual, say claustrophobia, can be treated at these Correctional facilities.

THE COURT: I believe claustrophobia is in a special category from the aggressive personality. He has already said that aggressive behavior per se is not a mental illness. You never asked him whether extreme aggressive behavior, disrupting an act of hostility and aggression towards others can be mental illness.

Can it be?

THE WITNESS: The answer, Your Honor, is, yes. A most obvious example that one can think of and now we are getting into a different sort of nature, and we may be opening up that can of worms, but the most obvious example is where somebody has delusions, or hallucinations which, if acted on, would be assaultive and aggressive. For example, if somebody believes walking down the street that the Mafia are out to get him, and he believes that bloke walking behind him is a member of the Mafia, and he kills that man, that is aggressiveness that surfaces as mental illness. I think we have two kinds of dangerous mental illness. We have the dangerous people who have been dangerous all their lives, or for some period of their lives that have not been mentally ill, and then we've got the dangerous people who are dangerous as a direct consequence of their mental illness. They are two entirely different groups of people requiring entirely different programs to manage them.

BY MISS BLOOM (Continuing):

Q Would somebody with extreme aggressive behavior be treatable at the Correctional facilities?

MISS SILVERMAN: Nobody said they needed treatment.

THE COURT: He said depending upon the cause of the aggressive behavior.

THE WITNESS: Right, and can somebody aggressive be managed in a prison; certainly, of course.

Q Can they be managed is one thing, and can they be treated is something else.

A Well, I define treatment as that which is addressed at illness, and I do not define aggressive behavior as illness. Aggressive behavior deries out of an illness.

THE COURT: Is there any definitive way of knowing the underlying causality of extreme hostility, aggressive behavior?

THE WITNESS: Yes.

THE COURT: What is that?

THE WITNESS: The example that I used was epilepsy.

THE COURT: That is a particular illness, and very often pathologically used to demonstrate its existence.

THE WITNESS: Uh-ha.

THE COURT: Take a prisoner at Matteawan who, say, on the average of once a week is involved in a violent assault either on another prisoner or on a guard. He continually is getting into different fights, throwing chairs, kicking people, et cetera, and assuming that he is organically sound, that no tumors, or any other form of physical illness is present. Is there any way known to medical science of determining whether this person has what you would describe as a mental illness? In other words, that his behavior is being caused by abberrational behavior, or whether he is just exceptionally aggressive?

THE WITNESS: I think the answer, Judge, is to look at the aggressive behavior, not just at isolated phenomena. You have to look at the total stage, and if in the intervals between the two things he is deletional, he is ambivalent, he is often very depressed, or very manica -- maniac people can be assaultive, or lots of other mental symptoms and signs that could be noticed. Then, the aggressiveness can be looked at in the context of the rest of the person's mental functioning. Now, making a modification of your question where you said somebody in the Matteawan -- now, you know, you could have people who are assaultive at Clinton or Auburn or something like that, I would not say that is characteristic of them being mentally ill. Unless they display things that indicate mental illness -- because as I say, and as a parallel boring one and all, that aggressiveness is not mental illness. You can't equate the two.

THE COURT: I think I'll describe the average plaintiff involved. This case involves the following: There are quite a bit of criteria which fall within the mean of the average plaintiff. The average plaintiff is a person who has been convicted of a serious crime involving danger to others, homicide, assault, rape, what-have-you. He has previously been diagnosed by two or more psychiatrists ---

THE WITNESS: Physicians.

THE COURT: Physicians qualified in psychiatry.

THE WITNESS: No. 408 requires examination by two physicians. You don't have to secure two examinations by two psychiatrists.

THE COURT: He has been previously diagnosed by two physicians pursuant to the New York Mental Hygiene Law as being certifiable, and being psychotic. During the course of his stay at Matteawan he has been involved in the use of force on a number of occasions usually involving prisoners and Correctional persons as opposed to strictly other prisoners. Eventually a point is reached at which the prison psychiatrist determines that he is manipulative. A word they all use, manipulative. That he is attempting to manipulate them, and in fact he does not have a mental illness, and the usual case. He is then returned to a prison where, apparently, again, he engages in assaultive behavior against either other prisoners or Correctional persons, and again is certified back to Matteawan through the Mental Hygiene process as being "psychotic," and in need of treatment. And, again, the Matteawan personnel finds that in their opinion he is not mentally ill, but merely manipulating. Is there any definitive way of deciding who is correct in this situation, the Matteawan doctors or the certifying doctors, or is there always going to be an area of discretion where we can't say who is right, and who is wrong?

THE WITNESS: Yes, there is always going to be an area, and no, you can't create a situation in which everything is going to agree. I know another aspect of this is definition of mental illness that lay people, and by that I mean non-psychiatric, what they perceive as mental illness. For example, somebody who is constantly scratching their wrists must be mentally ill. The fact that the scratches go up. and the fact that he says, "I'm just doing this so I can get to Matteawan, and be near my family," he must be crazy because normal people wouldn't possibly act this way. So, you got the problem of perception by prisons which is another element that has to be taken into consideration in physicians versus Matteawan people.

THE COURT: Let's go off the record a second.

(Whereupon a discussion was held off the record.)

THE COURT: Back on the record.

BY MISS BLOOM (Continuing):

Q I don't want to belabor this point about the adequacies of the facilities, but are you familiar with the number of psychiatrists at the Greenhaven facility?

A Yes, I have an idea.

Q How many?

A Greenhaven has no full-time psychiatrist, but the psychiatric services there are provided in two ways. One is by part-time psychiatrists coming in. For example, Dr. Boyer from the Mid-Hudson, and directly by Dr. Havlawaller, the Director of Harlem Valley who both attends itself and sends members of his staff on a part-time basis as required.

Q Do you know how many hours these part-time individuals spend at the facility?

A I don't know.

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Q Are individuals treated at Greenhaven in a particular area where they live, or are they treated and sent back to their cells?

A At one time there was Cell Block A that was to be used as a mental observation unit. I don't know if that is currently operational as a mental observation unit, and the people in general are treated in the prison, in the general population, I think -- I'm not certain.

Q What staff is kept available at Clinton Correctional facility?

A At Clinton there is one psychiatrist, and one -- two. I think two. Maybe three part-time staffers, one full-time psychiatrist, and one, two, three part-time. Dr. Cornea goes up there on a regular basis, and somebody else. The name I can't remember.

Q Again, are the facilities to treat individuals separate from the general population?

A No.

Q And just one more. Fishkill Correctional facility, how many psychiatrists are available at this facility for the Fishkill general population?

A The services for Fishkill are provided by Matteawan.

Q The facility at Auburn? What about Auburn?

A Well, let's run these -- well, Auburn, I've forgotten, but the adequacy of the service is better than at a couple of those places that were not mentioned. Auburn is not the best staffed of these units. That is done by part-timers. Again, nothing can be said about the present thing, but the Auburn is one of these places where the huge psychiatric center in Syracuse University is going to be involved.

Q How many psychiatrists are currently available at Auburn?

A Two go in on a part-time basis and others as required. Elmira is where we ought to look at. There they have got two part-time and I mean formal part-time. I don't mean they go in now and, again, I mean their whole week is taken up by the total of those psychiatrists. We have got four psychologists, full-timers down there.

Q My only question is, are the ones you have already discussed are the only facilities -- the only individuals that would be transferred to Matteawan?

A People can be transferred from any institution.

Q Correct.

A Yes.

THE COURT: We are going around in circles with this.

Under your new proposed plan if implemented, there still would be approximately half of the present Matteawan population who would be hospitalized rather than treated at the Prison Mental Center?

THE WITNESS: Surely.

THE COURT: Simplifying it somewhat, if one of those kinds of persons, the kind you believe belongs in a hospital were erroneously transferred to a prison, at the present time would he be receiving adequate medical attention?

THE WITNESS: If erroneously transferred, by definition the answer -- he would not be receiving adequate attention because by definition ---

THE COURT: Take the word "erroneous" out. If one of those that you believed required hospitalization, and would be either, under your future plan, be put in a hospital, or would he be sent to a prison regardless of any one of the prisons, would he receive the kind of medical attention that is needed?

THE WITNESS: Again, even given all of these units that we are talking about there are some people who should not go back to prison because of their mental status, certainly.

THE COURT: Essentially because of how the system is readjusted, and an essential aspect of it will be that the decertifying or return of prisoners from the hospital to prison can be done on a reasonably accurate medical basis?

THE WITNESS: Yes.

THE COURT: And that is really what this case is about.

MISS SILVERMAN: Your Honor, again, I feel, and I feel that although it isn't directly relevant, I feel that although it isn't directly relevant, I feel that the people who have testified so far as we can demonstrate, and I think we demonstrated that none of them were in need of treatment in a prison, I would like the record to further indicate that there are psychiatrists and psychologists available at all Correctional facilities, either because they are full-time or part-time. So, after somebody is released on Sparine, at the prison there are qualified doctors to see that the medication is administered.

THE COURT: Miss Silverman, you have brought that up twice today.

MISS SILVERMAN: Miss Bloom has brought it up.

THE COURT: I think she brought it up, and I have a boring point, and you are going on. It is to the point where you are boring me. I am aware of your position.

MISS SILVERMAN: In view of the

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fact that this case may go further than Your Honor ---

THE COURT: It certainly might.

MISS SILVERMAN: I would like the record to show that there is available at Walkill and Eastern, and whatever institutions there are ---

THE COURT: Before you do that, I ought to know there is an additional issue in this case. He mentioned earlier that the general criteria for retention of patients was rather vague, but you brought it as being in need of hospitalization. In fact, the Correctional Law uses the phrase "recovered," with respect to when patients go back to prison. If there has been ---

Am I correct, Miss Bloom?

MISS BLOOM: Correct.

THE COURT: The word "recovered" is in the law. The testimony by prior psychiatrists has not been in agreement on many points, but you could say one point we all agreed on is, if somebody actually has a serious mental illness such as to be defined as a psychotic, he can never be considered recovered. He can only be recovered in a state of remission.

Now, this, then, would seem to create a contradiction between the present medical thinking on the subject of serious mental illness, and the phraseology used in the Correctional Law. Subsequently we have to deal with the law as it is developed, and whether in fact it means recovered when it says recovered.

MISS SILVERMAN: I don't think it means to keep a being in remission.

THE WITNESS: One word. You can term the word "recovered" -- I would certainly separate "recovery" from "cure," which I think is another whole thing you can put in brackets after recovered to the point where he no longer needs hospitalization.

MISS SILVERMAN: Also, I think

"cure versus recovery" -- I believe one doctor explained, and somewhat different, and since the statute talks in terms of recovery, and not in terms of cure, remission would be no recovery.

THE COURT: No question. Your interpretation of the usage, it means to the point of not requiring hospitalization any further which comes back to the term "in need of hospitalization." We haven't had agreement on that from expert witnesses.

THE WITNESS: I would be surprised if you did.

THE COURT: There have been those who say that the guideline is psychotic versus neurotic, and they are not to keep a neurotic. Other witnesses have differed from that and have taken a treatment, mental proof. There have been some disagreement over whether someone is psychotic, but not profiting from hospitalization, and he should be returned to prison.

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Would you agree that there has been an absence of agreement on that point?

MISS SILVERMAN: As I recall a witness for Mr.Gulley,who is a psychologist at the Institution, he testified that he could keep neurotics. My interpretation of the defendant's witnesses, that given perhaps a severe neuroses, they may be inclined to keep somebody, but I don't think anybody testified that someone with a neurosis necessarily, or anyone strongly indicated that he takes such people at Matteawan.

THE COURT: We are talking about psychiatrists and not responding to treatment.

MISS SILVERMAN: I thought that a psychotic, I could be wrong, but it seems to me that a psychosis is treatable. However, when a person reaches a point where a psychosis is in remission or a person has character disorders, antisocial personalty, there is no treatment to be given to them, and that person transfers back to an appropriate -- I don't recall any testimony by anyone that a psychosis is not treatable.

THE COURT: Forget whether they are treatable. If you have a psychotic patient who has been hospitalized for a year, and has not improved in the slightest,my recollection is that one of the doctors testified that since the hospitalization wasn't accomplishing anything for him, he ought to be back to prison.

MISS BLOOM: I believe it was Dr. Sweeney who testified.

MISS SILVERMAN: I didn't get that set of minutes. I haven't heard that testimony.

THE COURT: Would you agree with that procedure?

THE WITNESS: I maintain that if someone is psychotic, and in need of hospitalization, he should be in a

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hospital. I do not feel that therapeutic diagnosis is a valid instrument except in very rare circumstances. I don't say if you do not respond to ETC, then you can't get depressed and/or if you don't respond to phenothiazine that you do not have schizophrenia, and conversely, if you do respond to phenothiazine that then you do have.

THE COURT: You hedge to your answer with psychotics who need hospitalization. Are there psychotics who do not need hospitalization?

THE WITNESS: Yes. You can't throw a brick outside this building without hitting somebody.

THE COURT: Off the record.

(Whereupon a discussion was held off the record.)

THE COURT: Back on the record.

THE WITNESS: In answer to your question, there are all kinds of psychotic people, which is what the community health movement is about, that do not have to be in the mental institutions because you have a number of psychoses.

THE COURT: You don't view the existence of psychosis as being the primary criteria for retention or release of patients from Matteawan?

THE WITNESS: No.

MISS BLOOM: A couple of questions.

BY MISS BLOOM (Continuing):

Q Don't we have to use medication in this community treatment approach in applying that approach to prison environment? Don't we have to make some modification in view of the fact that we are returning someone not to the community, but rather to a prison institution?

A Yes. One of the objectives -- one of the factors that is involved in this is -- there are thousands of them, that if somebody is, and let's exclude the present cases, and let's exclude any of the lots of factors that -- let's talk outside of the Correctional system altogether. The fact that somebody is able to function adequately in a hospital does not necessarily mean that the same person can function adequately in a non-hospital situation. You know, the veil term, asylum, "crazy". However, there are all kinds of people for whom it would be very much better if they were never hospitalized at all, and that treatment was geared to enable them to function better in their natural habitat, and so, therefore, I'm not saying that prison is the natural habitat, but the place where that person is in prison is that person's community. If you can help that person and treat him, treat his mental disability without removing him from his natural habitat, and don't add on to it, this has a lot of virtues because it also militates against the malingerer who is at Matteawan. The prison subculture, which you are familiar with, when they get back to prison, they -- in some cases suffer from the fact that they have been in Matteawan. There are cases ---

MISS BLOOM: No further questions.

THE COURT: I have one question for you, Doctor.

This case basically concerns the procedures used for what we have come to call "decertifying patients." Probably a misnomer because the phrase "certi-

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fication" is a legal process with which you are familiar, which I believe was handed down to us by the English, whereas, the process of sending prisoners back to prison out of the hospital is done at present purely on a medical basis with no intervening of the Courts, or lawyers, or any external standards, or guidelines. At least none that we have been able to uncover. The claim of the plaintiffs is that this absence of standard procedures and due process has resulted in a number of them being improperly put out of the hospital and sent back to prison to the detriment of their health, and thereafter an unconstitutional deprivation, and the plaintiffs are seeking the establishment of more formal procedures which would insure the patients or afforded their rights before being returned to prison.

You have indicated that the Mental Hygiene Department has responsibility for the operation of other facilities of persons who have been committed by process of law, and contrary to their own wishes, but who are not prisoners and who will not be sent to prison when released from the hospital. So that at least to some degree I think the problem of the malingering does not exist, or at least not as prevalently as you might have it at Matteawan. In the Institutions presently under the Mental Hygiene supervision, which process and procedures are applied in determining that a patient is suitable for release from the hospital?

THE WITNESS: Okay. In general, first of all, it is a medical decision. Secondly, there are two ways in which this is done. First, the team that I mentioned earlier that was started at Matteawan, they have been effective in the State Hospital for some years, and the team generally makes this decision.

It is made on the recommendation that the person and the team who is on guard, whatever word, focal therapist, whether the focal therapist is the doctor, social worker, or attendant, or whoever it is, that focal therapist would be the person brings it to the attention of the team, and then the team besides, or, you know, the phsycians who has got the statutory conditions affecting him may override, but basically, it is a team decision. I'm talking about the general run of the State Hospitals at this point.

THE COURT: Are there any written guidelines or published criteria for making this decision?

THE WITNESS: No. They tend to be made in terms of negatives. They tend to be in terms of restrictive alternatives, in terms of when somebody is examined, alternatives to hospitalization must be looked at. You can't keep somebody in longer than he needs to be there.

You got to give him treatment when he is there. This is all included in Article 15 of the Mental Hygiene Law, and part 27 of the regulations which is the so-called Patient's Bill of Rights.

THE COURT: Does it occur that a patient who is determined to no longer need hospitalization indicates he disagrees and feels he should be retained at the hospital, and if so, how is that handled?

THE WITNESS: Two ways. One is that he would make this known, and the reason made known, and if it would be valid, then he could probably stay. However, what we have to take account of competitionally with institutionalized patients, not to put value judgments into this case which Christ knows shouldn't be in, but the institutionalized patients sees home as being a very comfortable life. It's a very easy life. I got fed, I got the news. I asked --

go down, have tea. It's easy. Whether or not it is good, good for that person, is value judgment, but let's assume the value judgment is more impersonal. Somebody is better if he would be put into the hospital. I think this has been summed up. Some of the problems in this area have been summed up in that involuntary communitization can be just as evil as institutionalization. That is what the guy who wrote the article was talking about, was that a person should have the treatment when he needs, and to put him in the community without the treatment that he needs is just as bad as keeping him in the hospital against his will. Just to go back to your original question, there are certain categories of patients that are reviewed by what is called the Special Release Committee in each institution since we have unitized, and gotten team treatments, this tends to be modified, but basically for certain special types of cases they will be reviewed by the Special Release Committee.

The patient who is presented to the Special Release Committee is that person who first of all under -- well, it is civil status, but it is from a criminal court, and that is not guilty by reason of insanity who cannot be released without the Court authorization. They would be presented to the Special Release Committee before the hospital requests that I initiate proceedings to get them released. The second kind of person who is put before the Special Release Committee is a person whose behavior while in the hospital has been very assaultive or who might have had a long criminal history and bashed out from Matteawan, and is potentially assaultive. This kind of thing. So that in each case it is done by the clinical staff where -- well, obviously, The Mental Health Information Service has to be involved in this, but they are involved with people in Matteawan as well. The question of involuntary retention is more than what they address. So, they did take one case where they said that the hospital had been naughty and converting somebody to voluntary status because he was not mentally well to be voluntarily --

MISS SILVERMAN: There is a voluntary status.

THE COURT: I am aware of the voluntary status. I'm talking about involuntary.

MISS SILVERMAN: Because you asked in what other ways people might be involuntarily committed.

THE COURT: Suppose someone calls to your attention a condition of a patient who has been found no longer in need of hospitalization after having been involuntarily committed, and it was alleged that the main producing cause of these decisions were repeated disturbances committed by this prisoner in which, let's say, he assaulted a doctor and a nurse, and other hospital personnel to such a point that everybody became fed up with him, and it was claimed that their medical judgments were influenced by their inability -- personal desires to be rid of a nuisance. How, if at all, would that be reviewed by the Mental Hygiene Department?

THE WITNESS: If you got somebody who is, first of all involuntary patient, and secondly, is violently assaultive to the point where that the hospital couldn't cope with him, there are two routes. One, -- first of all, if he assaults somebody it might be reported to the legal authorities, but secondly, if that person can be transferred to the Mid Hudson Psychiatric Center with procedure spelled out to see -- spelled out to see people are not railroaded in the Mid Hudson. And now, once in the Mid Hudson you respond,or recover either from mental illness, or recover from the violence whether or not associated with mental illness, but only recovery to the point where the person can be returned to the hospital from which he or she came. Mid Hudson writes to me and says, this guy is now okay to go back to which ever hospital it is, and I write an order of transfer, and the person is transferred back to the regular hospital.

Insofar as the problems of somebody who is assaultive and violent and no longer mentally ill, takes force, or violence, that doctor can then set up -- made specific reference to the problems that an institution is represented with when they have somebody who has been mentally ill, has been successfully treated, but still remains assaultive and violent, do you keep him in a mental hospital and isn't that detention, and sending him out, that is socially irresponsible, and what do you do in these cases is extremely difficult because danger and violence is not mental.

MISS SILVERMAN: I have two questions.

THE COURT: I am finished.

REDIRECT EXAMINATION BY MISS SILVERMAN:

Q I would like the Doctor to comment fully on what facilities, psychiatric facilities are available at Wallkill and Eastern.

A They got full-timers.

Q Who has got?

A Wallkill and Eastern Prisons. At Eastern there is a two, three full-time psychologist and psychiatrist that come in both as required, and on a regularly scheduled basis.

Q Wallkill?

A Wallkill has got limited, very limited. It's part-time. I am not sure at Wallkill.

Q Is Wallkill maximum or medium?

A Medium.

Q Are there any other facilities there?

A Well, there is a whole raft of these community facilities in New York City.

Q They are work-released people?

A They are work-released people, and they are served by the Mental Hygiene Unit that we have.

Q Would you say, given medium and maximum security institutions that there are some psychiatric programs available in all of them?

A Yes.

MISS SILVERMAN: I have no further questions.

MISS BLOOM: One further question.

RECROSS EXAMINATION BY MISS BLOOM:

Q Dr. Wright, do you believe that if procedure were introduced so that individuals who felt that they should remain at Matteawan be provided with a hearing similar to the retention hearing? Would that burden in any way the medical practice or psychiatric services that are currently found at Matteawan?

MISS SILVERMAN: I will object to that question.

THE COURT: Because it goes to the remedy, to the problem.

MISS SILVERMAN: Remedy, and also I feel that I don't know if Dr. Wright is qualified to say that.

THE COURT: If he is not, I am sure he will tell us. I think technically you are right, it goes to the remedy rather than the existence. Rather than have to call somebody from Matteawan after he leaves --

THE WITNESS: I have a number of reservations about that particular thing, and while I'm a psychiatrist, I'm an administrator, and I have some legal questions about that, but let's not go into that.

Insofar as the psychiatric things are concerned, this would be a very substantial change in the treatment of mental illness, because in that sense it would be making the determination that somebody is not mentally ill, and no longer in need of treatment, into the courts. Definitely, it would be applying different standards for release of patients who might be genuinely ill in all State Hospitals -- in other words, I could see the potential for enormous abuse, a whole raft of technical patients or simply people that would tie up not only the staff of a hospital but also the courts.

THE COURT: Doctor, what do you think from an administrative standpoint the fact that on many cases they are dealing with aggressive patients or they decide to return to prison because they no longer require treatment, the medical staff does not advise its patient that he is, in fact, that he is being sent back to prison, and the first he learns of it is when a couple of

Correction Officers come to call him away?

THE WITNESS: I think that somebody should be notified as soon as a decision is made to return him to prison. I can certainly understand the reason why in some cases this is invariably the practice. I think somebody should be told.

THE COURT: I guess that concludes it. Thank you, Doctor.

We will recess.

(Whereupon a recess was taken.)

THE COURT: Are we ready?

MISS SILVERMAN: At this time we will call Dr. Feldman.

DR. SEYMOUR FELDMAN, having been duly sworn by Gerald Beattie, a Notary Public for the State of New York, was examined and testified as follows:

DIRECT EXAMINATION BY MISS SILVERMAN:

Q Dr. Feldman, where are you currently employed?

A At the Matteawan State Hospital which is a unit of the Fishkill Correctional Facility.

Q What is your position there?

A Psychiatrist three.

Q Psychiatrist three?

A Yes.

Q How long have you been employed at Matteawan State Hospital?

A Since July of 1974.

Q Now, could you state your educational and professional background? Doctor, first, your education, then your work experience.

A My educational background consists of a medical degree from New York University College of Medicine. My resident training in the field. I have rotating internship at Queens Hospital Center, Jamaica. One year residency at Saint Elizabeth Hospital in Washington, D. C., which is a Federal Institution; one year's residency at Veterans Administration Hospital in the Bronx, New York, and I have -- I began my psychiatric staff experience with the Matteawan State Hospital in 1973. Since then I have transferred to the New York State Department of Mental Hygiene and in the capacity of a director of an out-patient clinic; later transferred to the Harlem Valley State Hospital which is also a unit of the Department of Mental Hygiene and transferred to Matteawan State Hospital in July of '74.

Q Now, have you done any residency in psychiatry?

A I've two years in residency in psychiatry. I have additional work as a member of the Medical Corps. in the U.S. Army. I have psychiatric work with the Army Corps.

Q Are you licensed to practice medicine in the State of New York, Doctor?

A Yes.

Q Are you Board eligible in psychiatry?

A Yes.

Q Now, Doctor, during the course of your ten year at Matteawan State Hospital, have you had occasion to evaluate patients there from time to time?

A Yes.

Q What standard do you apply today in determining whether somebody should be permitted for return to State Correctional facilities?

A A number of criteria exist.

Q Your main opinion.

A First, is the degree of contact with reality, or environment, that is crucial. The other would be the ability of individuals to cope with general rules of the institution. The third is the degree of motivation the patient may show in his general activity, and fourth, would be the presence or absence of bizarre, abnormal, or bizarre behavior.

Q I would show you, Doctor, the progress notes and clinical summary on a George Gulley. Do you know George Gulley, Doctor?

A I am aware of Mr. George Gulley.

Q On April 23, 1975, I believe the sheet of paper shows you a report note on George Gulley; is that correct?

A That's correct.

Q Did you recommend his return to State Correctional facility?

A Yes.

Q Was it your medical opinion, Doctor, at that time that he was then suitable for return to a State Correctional facility?

A Yes.

Q Would you explain to His Honor why?

A Well, this patient met much of the criteria that I said before. Namely, sufficient contact with his reality and environment. Degree of motivation through his activities. There was readily unavailable a lack of bizarre behavior, and so on. He met much of the criteria that I cited.

Q In your opinion, then, was he in need of treatment at Matteawan?

A He no longer required treatment.

Q Would you just state so we have it for the record the basis, how you know George Gulley, and how you came in contact with him?

A As I said before, I had been at Matteawan State Hospital for approximately ten months before this note was written, and I had some contact with this man.

Q Mr. Gulley testified that he escaped from Matteawan State Hospital in and around approximately March 16, 1975. Did you recommend that Mr. Gulley be transferred back to a State Correctional facility, Doctor, because he escaped from Matteawan State Hospital?

A Not at all. I recommended his release on the basis of my findings.

Q Now, turning your attention, Doctor, to State Exhibit B and to State Exhibit G in evidence, Doctor, and turning your attention to Mr. Gulley's chart do you concur in a decision, Doctor, on October 20, 1975, to return Mr. Gulley to State Prison?

A Yes.

Q Was it your medical opinion at that time, Doctor, that he was suitable for return to a State Correctional facility?

A Yes.

Q Would you explain what that is, Doctor, and the basis upon which you arrived at that determination?

A This patient, again, met much of the criteria I cited above. Namely, his contact with reality was fairly good most of the times. In fact, the only time he might have showed disturbance or contact of reality was when he was drunk, and there are many occasions where he deliberately imbibed alcoholic beverages, by what means I don't know, but he would maintain a good contact with reality.

Q Did you know Mr. Gulley?

A Yes.

Q Prior to October 20, '75?

A Yes.

Q How did you know him? How did you come to know him?

A Through frequent contacts through the ward.

Q Was he on your ward?

A Sometimes, yes, but I would travel these various wards in the course of my business, and I would get to know many of the patients.

Q Now, turning your attention to Mr. Cruz, which is Defendant's Exhibit G in evidence, October 29, 1975 or thereabouts, did you concur in a decision to transfer Mr. Cruz back to a State Correctional facility, Doctor?

A Yes.

Q In your medical opinion was he suitable for return to a Correctional facility?

A Yes. Again, usual criteria. His contact with reality which was good, and remains good.

Q Did you know Mr. Cruz?

A Yes.

Q Prior to that date?

A I believe he had been a patient in ward four which I was responsible.

MISS SILVERMAN: Fine. I have no further questions of this witness -- one further question.

THE COURT: Go ahead.

Q Mr. Gulley and Mr. Cruz testified that they were involved in altercations at the institution, sometime early October 1975. Did you concur in a decision to transfer them out of Matteawan State Hospital because they were involved in a fight?

A No. This patient was generally in good contact with reality, and even his involvement in this altercation did not change my opinion that he did this with full knowledge of what was going on.

MISS SILVERMAN: Fine. Thank you.

CROSS EXAMINATION BY MISS BLOOM:

Q Dr. Feldman, you indicated the criteria that you utilized and evaluating patients at Matteawan; determining whether they should be returned to prison. Do you consider in deciding whether or not to decertify a patient whether or not the patient would be able to adjust to prison life? Is that one of the factors to be considered?

A Sometimes, but not the crucial -- that is not crucial to my opinion.

Q Why is it not?

A Because it is a secondary consideration. The primary consideration is the sanity of the individual.

Q In --

A I regard his wanting to go to prison and not wanting to go to prison as a matter of choice, but it does not have anything to do with the state of sanity.

Q In making a decision as to whether or not return somebody to a prison, do you first decrease the amount of medication the individual receives to a level --

A I generally do.

Q -- to a level they generally receive in the prison?

A I generally do that, yes.

Q Now, regarding Mathew Gulley, I believe it is indicated in his clinical summary, which you have before you --

A Yes.

Q You made a notation on March 11th, 1975, which is noted as readmission note. Would you review that --

MISS SILVERMAN: What date?

MISS BLOOM: March 11, 1975.

THE COURT: Is this Gulley?

MISS BLOOM: Gulley.

Q Can you find it?

A Yes.

MISS SILVERMAN: Okay.

THE COURT: Go ahead.

Q Based upon your observations in that readmission note, did you believe at that time that Mr. Gulley was an appropriate patient to be treated at Matteawan?

A Frankly, no.

Q Why is that?

A Because I believed that Mr. Gulley's actions are contrived. They are deliberative in the sense that he seeks a certain objective. They are even -- the motives are apparent. One of the essences of severe mental illness is that the motives of the patient are not apparent to the world, and to the psychiatrist. That patient may have motives which are not fathomable, understandable, in the ordinary sense. That is, in essence, his mental illness, Mr. Gulley's actions, and statements, at all times are transparent; are clear.

Q You disagree with two psychiatrists' certifying, and the Judge who committed him to Matteawan?

A Yes, I would.

THE COURT: I think we would note that Dr. Wright correctly said they do have not two psychiatrists but merely two practicing physicians.

MISS BLOOM: The readmission indicates that it was by two psychiatrists.

THE COURT: Two psychiatrists in this case.

Q Doctor, that meant that Mr. Gulley would be transferred back to a Correctional facility at that time?

A No.

Q If we turn to September 22nd, 1975, there's a notation, your evaluation. You indicated in the end of that paragraph, in view of the present circumstances this certain case to Correctional facility would be inappropriate; is that correct?

A That's correct.

Q Did you feel that it was appropriate for him to remain at Matteawan?

A Principally because he was on a large dosage of medication which might not be reduplicated at institution at which he might be sent.

Q Why was he on a high dosage of medication?

A I believe he was not my direct responsibility at that time. I examined the patient. He was not my direct patient. He was perhaps a patient of Dr. Fector (phonetic). And I make it a rule of my activities not to interfere with decisions of other psychiatrists in other parts of the institution.

Q So, another psychiatrist had made the decision?

A If that psychiatrist feels justified in giving this patient the medication, I will abide by that decision, and not change it -- not attempt to change it.

Q Turning to October 20, 1975, can you first tell us who initiated the evaluation that was done on October 20, 1975, on Mathew Gulley?

A It might possibly have been Dr. Lawrence Sweeney who is the chief psychiatrist of the institution.

Q Do you know that Dr. Sweeney initiated the evaluation?

A He recommended it in our doctors' staff meeting.

Q Did he normally initiate evaluations of patients?

A Yes. He can initiate these.

Q Did he indicate to you at that time why he felt it was appropriate to evaluate Mr. Gulley at that time?

A He may have mentioned it in terms of making a decision with regard to disposition of this patient. He often would bring up, and quite justifiably, the idea of making decisions on disposition of patients. This is a normal function of an administrator, or chief of services, that he points directions out to other members of his staff and this is normal.

Q Was there any reason that he made this decision at this particular time?

MISS SILVERMAN: I object to that.

THE COURT: He may answer.

THE WITNESS: I could surmise.

Q What would you surmise?

MISS SILVERMAN: Objection to that.

THE COURT: I'll sustain that.

Q Did Dr. Sweeney communicate to you with regard to why he made that decision?

MISS SILVERMAN: I object to that.

THE COURT: Overruled.

THE WITNESS: I could surmise.

MISS SILVERMAN: Objection.

THE COURT: Say only what he told you, what he said to you. Not the conclusion you draw.

THE WITNESS: Then I could not recollect.

THE COURT: Did he make any reference to you, to the fact that Mr. Gulley had been involved in a fight with the guard shortly before that time?

THE WITNESS: I was aware of that.

THE COURT: Did Dr. Sweeney mention it to you?

THE WITNESS: I can't -- I can't recall.

THE COURT: Is it customary to re-evaluate a patient who has been involved in an assault on Correctional personnel?

A It's not a standard procedure. It's one hundred percent.

MISS BLOOM CONTINUING:

Q It is one hundred percent procedure?

A Fifty percent.

Q Now, I understand that there were about five psychiatrists who evaluated Mathew Gulley on October 20; is that correct?

A Yes.

Q Is there any reason that you know of that five psychiatrists made this evaluation?

MISS SILVERMAN: I object to the question.

THE COURT: On what grounds?

MISS SILVERMAN: I don't understand what any reason you know of means. Did something happen to him? I don't know what that means.

THE COURT: Is it customary to be evaluated by five doctors, or by one?

THE WITNESS: No, it is not.

THE COURT: Was there any particular reason why five were used in this instance rather than one?

A It may have been that Dr. Sweeney's own choice of methodology.

MISS BLOOM CONTINUING:

Q In determining that Mathew Gulley should be returned to prison, did you consider in your evaluation of him whether or not he would be able to adjust to prison life?

A To a minimum degree.

Q In making your evaluation to return Mathew Gulley go a Correctional facility, did you consult any use of forms?

A I looked at them.

Q Did you look at any other documents in making your decision?

A I studied his summary.

Q Turning to Hector Cruz, I believe you have his clinical summary also. Referring to his evaluation done on March 3rd, 1975 --

A Yes.

Q Would you just briefly review that?

A Yes.

Q Now, you made a decision at the end of the -- at the conclusion of that evaluation that Mr. Cruz should be retained at Matteawan; is that correct?

A I did not make that exact statement, except in terms of retaining him. I said -- I made th statement, retained.

Q Did you feel that in your medical judgment it was appropriate for him to be retained at Matteawan?

A I would say in general I did not make a strong case for his retention in Matteawan. I did not make a strong case. There is not much elucidation of symptomatology here in this note. This is not a strong case for mental illness. This is not.

Q Why did you make the decision to retain him at Matteawan?

A One might say, one gave him the benefit of any doubt.

Q What criteria did you utilize in giving him the benefit of the doubt?

Feldman/Cross

A He was depressed, and I also suspected that this man made very little attempt to adjust to the Correctional facility to which he had been sent.

Q Upon what facts do you base that conclusion?

A That he preferred to remain at Matteawan under all circumstances.

Q Turning to the periodic evaluation conducted on May 14, 1975, you again indicated that Hector Cruz should be retained at Matteawan; is that correct?

A I made the statement to retain him, but at the same time I mentioned that he disliked intensely being locked up, and will become aggressive if returned to prison.

Q Was that one of the factors that made you decide -- was this aggressiveness, his inclination to get involved in fights and return to prison one of the reasons that you decided to retain him at Matteawan?

A Yes.

Q Do you feel that Hector Cruz' aggressiveness is a manifestation of his mental illness?

A His aggressiveness is a manifestation of his personality basically, primarily .

Q Do you feel that further treatment at

Matteawan can effect this condition in any way?

A No.

Q You did state in that evaluation that it is hopeful that his condition will improve, he will be able to return to a Correctional facility?

A Yes.

Q Did you believe that this was one way this aggressiveness is to be treated?

A The only way I am aware of dealing with his aggressiveness is segregating him and limiting his contact with the patients he is known to have quarrels with. You quarantine him from those patients whom he is likely to have altercations. That is one of the advantages of the prison setting. It is more easy to quarantine him, segregate him from other inmates with whom he is likely to fight than it would be with Matteawan where you have a family-room situation where patients circulate frequently. It is harder to quarantine patients under those circumstances.

Q In the July 15, 1975, evaluation you noted that he has not been in fights lately, and you still made the decision to retain him at Matteawan. Why was that decision made?

A Well, it was based on prior understanding of the patient that he had this fear of returning to a Correctional facility, and he was still on medication of Tofranil, which is an antidepressant.

Q In October 20, 1975, you made an evaluation of Hector Cruz; is that correct?

A Yes.

Q Was his condition on October 20, 1975, different from what it had been in May and June of 1975?

A Yes. There had been a progressive improvement of his behavior.

Q He had been involved in fewer outbreaks of aggressive behavior?

A In general.

Q If I can direct your attention to a notation, August 6th, 1975, "Use of physical force on this date," and a notation September 7, 1975, "Use of physical force on this date." Do those two notations indicate to you that Hector Cruz' aggressiveness had increased or decreased?

A Well, if I may explain, the incidents with whom -- the incidents which he was involved with two other patients, namely patient Butler and patient Trongone (phonetic) indicate to me that he may have been provoked by the others. Patient Butler I am aware of had been quite psychotic at times, and quite likely to provoke incidents without reason and in the same sense patient Trongone is an aggressive patient who is insulting in his manner, and could have quite possibly have provoked Mr. Cruz.

Q Once again, who initiated the evaluation that occurred on October 20, 1975, on Hector Cruz?

A Again, this may have been Dr. Sweeney.

Q In determining to return Mr. Cruz to Correctional facilities, did you consider whether or not he would be able to adjust to prison life?

A The weight of the evidence indicated that his mental illness, whatever it had been, was diminishing. It was diminished.

Q Turning to George Dunleavy, on --

MISS BLOOM: May I see it?

MISS SILVERMAN: Would you pass the Dunleavy chart, Doctor.

THE WITNESS: (Handing)

MISS SILVERMAN: Dr. Feldman is my last witness.

Q There is an indication that on April 23rd, 1975, you conducted an evaluation of George Dunleavy. Do you remember whether or not on two days prior, about two days prior to that evaluation, you increased Mr. Dunleavy's medication?

MISS SILVERMAN: Those aren't the ward notes. They are additional ward notes which I do not have. This is just progress notes.

THE WITNESS: I am not able to co-operate that from these notes. Again, the doctor's order sheet is -- ward notes might indicate, but I do not note it here.

Q If you had decided to increase this medication would it have had any relationship whether or not you felt his mental condition had improved or worsened?

A I might have given him this medication to ameliorate his general condition.

Q In your experience at Matteawan, are patients -- how are patients punished if they get into fights or misbehave?

A I dislike the use of the word punish.

MISS SILVERMAN: Objection.

THE COURT: Sustained.

MISS BLOOM: I'll reword it.

Q What is done to patients that misbehave?

MISS SILVERMAN: I object to that. I don't know that anything is done.

Feldman/Cross

THE COURT: I believe the word, "misbehave," is too broad of a phrase. What action, if any, following assaultive behavior by patients --

THE WITNESS: Yes, we have regular protocol for that problem. The doctor is called to see the patient. The doctor makes whatever investigation or medical examination he thinks appropriate, and the doctor has a choice. He has a choice of several alternatives. One is to downgrade the incident, and restore the patient to a status quo, as he was before, and that is the commonest. The second alternative is to separate what I call, separating the combatant, to physically separate those who are involved in a fight against each other by dispatching them to another ward, or to a seclusion ward. That is the second alternative. The third alternative is to give emergency medication to the patient in the terms of heavy dosages of tranquilizers such as injections. There are other alternatives too. The patient might be physically ill. Sometimes he is physically ill as a result of the fight, and any injuries therefrom he will go to the hospital infirmary. So that we have a broad range of alternatives. Depending on the medical circumstances, and the doctor's own judgment as to what is most appropriate, and all these are employed either singly, or in combination --

MISS BLOOM CONTINUING:

Q Would the fact that a patient has been involved in a fight ever bring that patient to your attention so that you might become aware that this patient is indeed not suited for Matteawan and should be transferred back to prison?

A Yes. I believe there are many determinants of fights. A fight is merely the net result of a person's state of mind, and his behavior, very often fights are motivated by motives that we cannot understand or the patient does not disclose to us. For instance, if patients have quarrels against either, or for diverse reasons, they will fight, and yet upon questioning the patient we will not get a straight answer as to why he is fighting because the patient himself wants to keep the reasons hidden from the doctor. This is a very common finding at Matteawan. Patients simply do not give you the full disclosure, even lie. In fact, the lying tendency is so frequent that one -- I, as a doctor -- I am very prone to believe the opposite of the statement that a patient gives me; that the opposite may be more close to the truth than what the patient tells you; that very often fights between the patients are settlements of old grudges, lover's quarrels of the homosexual nature, love triangles, disappointment over not giving each other equal treatment in terms of gifts or money, settlement of gambling debts, there may be racial discontent, black versus white, black versus Puerto Rican, Hispanic versus white. Each fight has many determinants, and very often I am not able to put a finger on one reason. There may be many reasons.

THE COURT: Most of the fights by plaintiffs in this action form a following pattern, another patient is acting up in such a manner as to require some restraining action by the Correctional Officers, nurses or what have you. However, in the opinion of the plaintiff and other patients the Correctional Officers were exerting unnecessary force to restrain the other patient.

They then attempted to intervene to try to reduce the amount of force being used on the other patient, at which time they innocently became embroiled in this fisticuff with the Correction Officers. Is this a a correct scenario?

A Yes. It is a common scenario, but the reasons in understanding it are very complex, not simple at all. I say that as a psychiatrist in terms of patients projecting their own needs and their own fantasies upon the personality of the institution too. Much of the products of the behavior of the patients is due to their own fantasizing. They want to perform. They will intervene with another patient's activity or discipline in terms of them wanting to express what they would do if they were in the shoes of the Correction Officers. This process in psychiatry is called projection. This is also a manifestation of the grandiosity of these patients. It is also a manifestation of the masculine identification of the patients. In other words, these patients may feel a need to prove they are more masculine, more aggressive, more ferocious than the Correction Officers. This meets their various psychological needs.

MISS BLOOM CONTINUING:

Q If adverse aggression occurs for the reasons that you described, would these outbursts be a manifestation of mental illness?

A No, because of the process. These patients use psychology which is used by every-day people. You see, mental illness is a product of mental mechanisms, at least defined mechanisms by Freud and others. Every one of these mechanisms is used and employed every day of our lives. We use this mechanism for our own ego satisfaction. The patient uses them in an extraordinary or bizarre way, he exaggerates. This is where psychiatry differentiates from normal medicine, and normal activities. We, as psychiatrists, are supposed to know this, detect these abnormal mental mechanisms. You and I, as normal, we don't particularly pay any attention to them in ordinary activities even though we are using them all the time. We don't make a big thing out of it, but the psychiatrist has to pick up these abnormal usages of the normal mechanism that the patient displays. This particular psychiatry differs from ordinary medicine.

Q Does psychiatry deal in any way with the outburst of aggression for other reasons?

A Absolutely.

MISS BLOOM: No further questions.

THE COURT: Doctor, you made the point of the difficulty in Matteawan with its open wards, from keeping apart persons who probably should be separated from each other because of their natural antagonisms to each other, and yet Dr. Sweeney testified that he intentionally had placed in the ward six all of the aggressive patients. He said he wanted to keep all the dynamite under one roof.

THE WITNESS: I disagreed with his opinion, and his plan from the beginning, but he is the head of the department in that respect, and he initiated the plan. I don't agree with this kind of situation because I think it provokes antagonism rather than less.

THE COURT: Speaking of Dr. Sweeney, does he, or anyone else in a supervisory position, ever place any pressure on you or any of the other staff psychiatrists with respect to the evaluations you make and whether or not a patient should be retained at Matteawan?

THE WITNESS: In general, no. He leaves that to our discretion.

THE COURT: You say, in general. Have there ever been occasions when it has been suggested that you made a mistake and that a different evaluation should be forthcoming?

THE WITNESS: Well, he speculated in the staff meetings about most of the appropriate actions to take in a given patient's problem. He speculated in rating the pros and cons of disposing of a patient. This is a normal procedure where heads get together and explore the various alternatives. This is quite --

THE COURT: Has he ever said to you, "That this patient causes so much problems with the Correctional Officers and they are protesting too much, that I think we would be better off getting him out of here."

THE WITNESS: Yes, and I see a good reason for that. May I enumerate?

THE COURT: Certainly.

THE WITNESS: The reasons for that is, it is quite conceivable, and there are instances, not only in Matteawan, but in all areas of life , that the patient is so extraordinary that special measures have to be taken; that given the circumstances of our existence, our structure at Matteawan, that he could not effectively deal with that kind of patient. For instance, they were confronted with a -- that we try -- we have an open ward system and we try to maintain it to give the patients some degree of freedom, but in terms of a patient who is so aggressive, and is so untrustworthy, that they are not treatable under these conditions, but would benefit in a prison, in a segregated cell because their anti-social tendencies -- at least the others would be protected from them. In essence, that patient is what -- I use the following terminology, the patient is so tough, that we cannot deal effectively with him. This is seen in other areas of society. I feel Matteawan to be a military situation where you may get a recruit who is so tough, so troubled, so disoriented, that the only practical solution is to discharge him from the military service; that treatment methods and disciplinary methods will not work, and best for all concerned is to separate him physically. This is a very common situation and that one sometimes has the same kind of criteria in operation as a military service does.

THE COURT: Does it not sometimes occur that one of these hard nuts are sent back to prison they create such problems that the prison authorities decide that they will solve their problems by having them certified right back to Matteawan?

THE WITNESS: This is known as passing the buck. It is a very common thing that is applied, and unfortunately, we have it to an extraordinary degree.

THE COURT: Does it suggest a possibility that there should be perhaps some different facility set up solely to deal with this kind of assaultive, aggressive patient who may not be strictly speaking psychotic, but who is uncontrolable even in the prison environment?

THE WITNESS: I would say, no, for the reasons that violence begets violence. I have a fundamental impression about violence begets violence, it's like chemistry. When you put unstable elements together you get more instability. And so, I don't feel that planning special areas or institutions for violent individuals is going to solve -- very often what it does is give a place a bad reputation and that is what is happening to Matteawan because we are expected, and we are ordered to take care of violent patients whether we want to or not because of the unpleasant, difficult, and unpredictable nature of this responsibility we get, and deservedly, a bad reputation. It is similar to a heart surgeon, or a brain surgeon. If you do heart surgery with a patient who is a bad risk, you are going to lose a good number of them, maybe fifty percent. Your patient may die as a result of heart surgery, and so you get a bad reputation as a heart surgeon, but that does not do anything for the reputation of the heart surgeon. The risk is high, but it is still a good procedure, and the brain surgery, many people may die as a result of brain surgery, and others may recover. Does that mean that we should throw out the brain surgeon? Of course not. We know the risk. We are trying to make an intelligent assessment of the risk. That is what is done at Matteawan.

THE COURT: Are there no medication or medical treatment that can cope with persons who have that extreme hostile behavior?

THE WITNESS: Yes, there are, and we have given them.

THE COURT: Are they extensive?

THE WITNESS: Yes, they are. We cannot function in Matteawan without them. The place would be completely uncontrollable.

THE COURT: And yet, even with the

Feldman

use of such, of these, you still have some patients whom you find that the hospital discipline and orderliness is promoted by removing them from the hospital?

THE WITNESS: Well, I have my own opinions about that. Doctors are human, psychiatrists are human. We make mistakes too. I feel very often that much -- some of the psychiatrists on the staff underplay their roles. They underdo. They under-sedate, inadequately sedate these. As a rule, I generally administer to these patients enormous dosages of medication. As a rule I feel if it is worth giving, it is worthwhile giving to a very marked degree; whereas some of my colleagues do not do that. They underdo. I feel when they underdo they run the risk of tantrums or outbreaks of violence. I do not make a mistake of under-medicating them, but I see at the time, this event happened in ward six. I believe I had that ward, and I don't know what these patients' medications were. I had the general impression that they were under-medicated because if they were adequately medicated that would not happen. The value of the tranquilizers is, what I call, preventive psychiatry. It is preventive. If a patient has enough of penicillin in him he would not get that sore throat, if sore throats are going around. You can prevent illness, and you can prevent psychiatric illness by judicious use of medication. Some staff members underplay their roles. I mentioned this to them, but I have not enforced it. I seldom make the mistake of under-medicating a patient.

THE COURT: You place a low priority upon the patient's own wishes with respect to whether he is retained at Matteawan or returned to prison? Some of your own colleagues have testified, and frankly, indicated that to a great degree they'll go along with the patient's preference. If he wants to leave, they'll release him. If he wanted to be retained, he will be retained, and they explained to that is the circumstance in dealing with the hospital population.

THE WITNESS: That is true.

THE COURT: However, it would appear that this tolerance or acceptance of patient abuse can be dissipated if the patient participates in an assault upon guards or other hospital personnel, and, one, a patient who has been carried along, let us say even though he is not demonstrating active psychosis, suddenly finds himself going back to prison if he has been fighting with guards. Have you observed such events taking place at the hospital?

THE WITNESS: Yes.

THE COURT: Do you have any opinion as to how it should be handled, those situations should be handled?

THE WITNESS: Well, the best means is study the situation as totally as one can, which I do. I usually try to see if there may have been provocation on the part of the officers. It seems to be a rare phenomenum. More likely than not, it is due to patient provoking -- the patient provoking.

THE COURT: Do you think that the patient's wishes in being retained, except, of course, to the extent that it may actually demonstrate his mental condition, but if it is not demonstrative of his mental condition, but merely of a preference, should the patient's preference have any determinative weight in the decision whether or not to retain or send him back to prison?

THE WITNESS: No. It should not, because the patient's preferences may be whimsical, may be facetious, may be not well grounded. The patients with poor egos, they are very often subject to fantasies and wishful thinking. Very often a patient's conduct is wishful thinking, and I, as a psychiatrist, have to evaluate the importance of this. They are not wanted to go back to prison just because they like it at Matteawan, to me, appears to be a trivial reason, not even worthy of consideration.

THE COURT: Is the fact that they have been involved in assaults, provoking

Correctional personnel, a valid consideration in making such determination?

THE WITNESS: No, it is not because, again, the patient's reason for attacking may be very, very trivial, and unimportant, unjustified. For instance, if I may recall this episode that triggered this whole matter, it was over the fact that one of the other patients by the name of Negron saw to pick a quarrel over a nurse on the ward -- over another patient's medication. Now, said patient Negron had no right, or no knowledge of what another patient might or might not receive in the way of medication. He should have nothing to say about this matter, and yet, this was the triggering incident. So, it shows how, in general, how facetious, how haphazard a patient's whimsies may be, which all of a sudden produce this gigantic explosion, and fighting. It is a very regrettable situation that patients take upon themselves. They freely give opinions which they make, which might start fights. They use circumspection, and certainly do use restriction. There is freedom to say whatever they want, because, after all, it is a crazy house, because they are free to speak in a crazy house, say whatever they want. There is more freedom in a crazy house in that sense. You can't go around insulting people in society at large. Yet, in a crazy house, you can insult people any way you want. This is a profound psychological evaluation. There is more freedom in sanitariums than there is in society.

THE COURT: No further questions.

REDIRECT EXAMINATION BY MISS SILVERMAN:

Q Doctor, you said in response to Miss Bloom's final question that psychiatry can deal with aggression. I was wondering if psychiatry should in all cases?

A Well, ideally, yes, it should be used.

Q Well, would that be true if in the individual, such as Gulley, and Cruz, involved in some aggressive behavior, and returned to a State facility, would it be true that they should have been returned to Matteawan State Hospital?

A No. That aggressiveness was not basic to their personality. It was not the reason why they were being kept at Matteawan.

Q Okay.

A They are aggressive people because of the nature of the crimes they committed.

Q You said that you feel that the problem on ward six, the fight that Mr. Gulley and Mr. Cruz testified to sometime earlier in October, was in your belief -- might have been avoided if they had been given additional medication. If that were not the case, then were they in need of medication, and therefore not properly returnable to a Correctional facility?

A To be specific, in the instance of Mr. Gulley, it is my personal speculation that when he made this attack he was drunk on homemade booze, and this had nothing to do -- this is aside from the fact that he was getting medication from Staff. This man was drunk. Many of these activities occur under intoxication.

Q That is the same case with Mr. Cruz?

A That might have been the case.

Q But, in your opinion, assuming that -- withdraw that.

In your opinion, on October 29, 1975, were you ready to return --

A In a general sense, they could have been returned validly.

Q What do you mean, a general sense?

A That they were functioning fairly adequately; that they were in contact with reality. They did not show any unusual tension, unless they were drunk.

Q One final question. Doctor, are there people at Matteawan State Hospital who are not mentally ill within your criterion?

A They are not seriously mentally ill. They may be mentally defective. We have the mentally defective of which Mathew Gulley is one.

Q In March, 1975, you wrote a readmission note on Mr. Gulley, and I think you indicated in response to Miss Bloom's question that you were of the opinion that he was not in need of hospitalization at Matteawan, but that he had been certified by two psychiatrists. Why did you not then certify him back -- let me ask you a different question.

Why did you not then recommend his retransfer immediately back to a State Correctional institution?

A Well, in the first place, physically that is not easily accomplished. It requires reversing a decision that was taken by a Judge, requires reversing the procedures that were taken by the department in Albany, it requires a certain practical situation such as rearranging transportation. You are dealing with a great many people. At the time, the patient appeared insurmountable. That is, you cannot reserve the tide of events, and just sweep it aside, and send the water into another direction. You cannot, there's too much inertia.

Q Does it occur, Doctor, that a person has a history of bouncing back and forth, and you, as a physician in Matteawan, reach a point, there is no point even available to the State and find him there on your doorstep in a few weeks?

A That is correct. There are roadblocks which are insurmountable, that you can return a man to a Correctional facility; will that treatment be continued in some manner and extent, but there's no guarantee that the following morning --

Q Does it ever occur, in your medical opinion, that individuals returning to State prison facilities engage in activities to maintain his return to Matteawan?

A That is correct. He may provoke incidents which is designed to impress that he is mentally ill. He feigns illness.

Q If that type of individual returns quickly to Matteawan State Hospital, what, in your judgment, or not in your judgment, but do you do anything about immediately sending him right back again?

A Well, we have to give the man a certain amount of time and inspection to check out our judgment, and again, we are not infallible. We can be wrong, and so, rather than reverse the tide of events, you accept it and evaluate the man. It may take a week, it may take a month, but his best interest is served, and in that connection his own best interests are served.

MISS SILVERMAN: No further questions.

THE COURT: Doctor, you are the second or third person that suggested that Mathew Gulley's major problem is drinking. I was of the common layman's opinion that alcohol is a depressant rather than releasing inhibitions, it does not stimulate bizarre behavior by persons other than they would otherwise wish to commit.

THE WITNESS: I do not agree with that idea.

THE COURT: Correct me.

THE WITNESS: I believe that alcohol

is probably the most dangerous drug in society, more dangerous than LSD, or heroin, or anything else because a man who is deeply intoxicated is a danger. Most crimes, in my opinion, are connected or involved with the use of alcohol, and a great deal of mental illness is associated with the use of alcohol, and a great deal of social disintegration is due to the effects of alcohol. To me, alcohol is -- well, statistically, alcohol is the third largest medical problem in the United States just behind heart disease and cancer.

THE COURT: I did not mean to indicate that alcohol is a serious problem. What I was getting to is, that the behavior of a patient under the influence of alcohol has been, in effect, how they would like to behave were they not socially restrained.

THE WITNESS: Ex vino veritas, in wine there is truth.

THE COURT: Yes.

THE WITNESS: The person's chains are lifted; he lives a wishful life, he fantasizes, ex vino veritas.

THE COURT: You say Gulley, the fighter, may be the true Gulley?

THE WITNESS: This is the true Gulley coming out.

THE COURT: He is basically belligerent, his manner restrains him, except when he has some alcohol?

THE WITNESS: Some provokation. There's a euphoria with alcohol. This is a most thing to determine in dealing with alcoholics. They like to have it. Alcohol confers euphoria, which is a pleasant feeling, and a lot of people like the feeling. It is hard to knock a thing which a lot of people buy.

MISS BLOOM: One question.

RECROSS EXAMINATION BY MISS BLOOM:

Q Do you believe that individuals who are mentally defective belong at Matteawan?

A To some extent. If you are dealing with behaviors, with mental defects, which is another serious problem -- certainly alcohol is a serious problem, mental deficiency is a serious problem, and it is a common element in personality or in patient.

THE COURT: Do you believe that there should be specifically described criteria and standards for doctors at Matteawan with respect to retention of patients so that at least within the framework of their ability to diagnose, you are all working in the same direction?

THE WITNESS: Correct. We should have a manual of procedures like any other institution. It's called a standard operating procedure. We should have that manual of standard operating procedure. This against slipshod and people have their own way of doing things.

MISS SILVERMAN: No further questions.

THE COURT: Thank you, Doctor. Do the Defendants rest?

MISS SILVERMAN: We rest, Your Honor.

MISS BLOOM: If given the opportunity, I don't expect there's going to be at this point, but the only rebuttal that I would like to introduce is the complete medical and mental history of the Plaintiffs.

MISS SILVERMAN: I don't know what that means. I am sorry.

MISS BLOOM: By the institutions that these individuals have been in through their life.

THE COURT: How many prison records from other prisons will be related?

MISS BLOOM: Not the prison, various other mental institutions.

THE COURT: Are you saying that if these particular Plaintiffs have been in mental institutions other than Matteawan, you might want to offer their entire history?

MISS BLOOM: Right.

THE COURT: It is up to you to get the reports.

Assuming she gets them, do you have any objection to that being entered in evidence?

MISS SILVERMAN: I think, given the nature of psychiatric care -- a person's state of mind, as I understand it, can change from time to time.

THE COURT: The way to be given to the earlier records is obvious.

MISS SILVERMAN: I reserve until I see it.

THE COURT: I agree. She may not get them, and yet, she might.

MISS BLOOM: One aspect is the review of men's files, of the patients, and I would like to be able to introduce the institutions the people have been in.

THE COURT: We will take that up. At the very least, you would be entitled to show periods of incarceration, incarceration pursuant to the Mental Hygiene Law. I suppose that means admitting -- releasing diagnoses to be taken under consideration, but, of course, as Miss Silverman points out, the fact that they may have had, or been diagnosed as having mental illness at an earlier date is not necessarily important to their condition as it relates here.

We can set some sort of schedule

for the submission of briefs. I understand you wish to submit one too; do you?

MISS BLOOM: Yes.

MISS SILVERMAN: Can we go off the record?

THE COURT: Off the record.

(Whereupon a discussion was held off the record.)

THE COURT: When will you submit your brief? You have an order to turn over to Miss Bloom the records of those persons whom she represents. It would be those names originally, plus those --

MISS SILVERMAN: Could we set the dates for the brief?

THE COURT: The date for your brief Miss Bloom?

MISS BLOOM: I would like two weeks.

THE COURT: April 5 for your brief.

MISS SILVERMAN: A week.

THE COURT: All right.

Subscribed and sworn to
before me this______day
of________________, 1976.

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CERTIFICATION

I, GERALD BEATTIE, do hereby certify that the foregoing is a true and accurate transcript of the minutes taken by me.

Gerald Beattie

Gerald Beattie

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